IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,235

LOCAL UNION NO. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Petition to Review and Modify in Part an Order of the National Labor Relations Board

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JOINT APPENDIX

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A-1 Filed Nov. 3, 1951. Joseph W. Stewart, Clerk

In the United States Court of Appeals
for the District of Columbia Circuit

No. 11,235

LOCAL UNION No. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

Petition for Review Of, and To Modify an Order of the National Labor Relations Board

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To the Honorable, the Judges of the United States Court of Appeals for the District of Columbia:

Local Union No. 1229 of the International Brotherhood of Electrical Workers, A. F. of L. (hereinafter referred to as "Petitioner") petitions this honorable court to review and modify a final order dated June 26, 1951 by the Respondent National Labor Relations Board (hereinafter referred to as the "Board") by which it is aggrieved and its interests are adversely affected and respectfully shows to the Court as follows:

1. Petitioner is a labor organization engaged in promoting and protecting the interests of its members who are employed in the radio and television industry in the city of Charlotte, North Carolina.

2. The Board issued a final order and decision on the 26th day of June 1951, a copy of which is annexed hereto and made a part hereof as Exhibit "A", finding that the Jefferson Standard Broadcasting Company (hereinafter referred to as the "Company") had committed certain un-

fair labor practices under the terms of the Labor-Management Relations Act of 1947, hereinafter referred to as the "Act", and ordering the Company to cease and desist from such practices and to take other affirmative action.

A-2 The Board, however, dismissed the allegations in the complaint charging that the Company had discriminatorily discharged George B. Patterson, Jr., S. J. Sullivan, Walter S. Hill, T. W. Perkins, Robert R. Hilker, A. O. Richardson, Allen W. Hingle, E. L. Stroupe and Sterling L. Hicks in violation of Section 8 (a)(3) and 8 (a)(1) of the Act, and that the Company refused to bargain with Petitioner in violation of Section 8 (a)(5) of the Act.

3. Petitioner has been improperly denied the relief which it has sought by such action of the Board in dismissing the allegations of the complaint stated in the preceding paragraph.

4. The Court has jurisdiction of these proceedings pursuant to the provisions of Section 10 (f) of the National Labor Relations Act (49 Stat. 452) as amended by the Labor-Management Relations Act of 1947, (61 Stat. 146, 29 U.S.C. Sec. 141 *et seq.)*.

The nature of the proceedings as to which review is sought is as follows:

1. On September 13, 1949 Petitioner filed a charge against Jefferson Standard Broadcasting Co. Inc., which operates a radio and television station known as "WBT" in the city of Charlotte, North Carolina, alleging that the Company had violated Section 8 (a)(3) of the Act.

2. On January 31, 1950 the Regional Director of the Fifth Region of the Board (Baltimore, Maryland) issued a complaint alleging that the Company had engaged in and was engaged in unfair labor practices affecting commerce within the meaning of Section 8 (a)(1) and 8 (a)(3) and Section 2 (6) and (7) of the Act.

3. The Company filed its answer denying the alleged un-

fair labor practices, and a hearing was held on the complaint from March 13 to March 17, 1950 before a Trial Examiner of the Board at Charlotte, North Carolina.

A-3 4. At the conclusion of the case-in-chief of the General Counsel of the Board, he moved to amend the complaint to add the allegation that the Company had refused to bargain in violation of Section 8 (a)(5) of the Act. At the conclusion of its case the Company amended its answer to deny the allegation that Section 8 (a)(5) had been violated and waived further hearing. The Trial Examiner granted the motion of the General Counsel to conform the pleadings to the proof.

5. The hearing was reopened on July 10, 1950 pursuant to motion of the General Counsel and further evidence was adduced concerning the Company's alleged refusal to bargain since the hearing of March 13 to 17, 1951.

6. On August 21, 1950 the Trial Examiner filed his Intermediate Report with the Board finding that the Company is engaged in commerce within the meaning of the Act; that the Company's discharge of the nine employees named on page 2 of this Petition and Leonard Flowers was in violation of Sections 7, 8 (a)(1) and 8 (a)(3) of the Act because the Company thereby retaliated against them for concerted activities engaged in by the said employees for their mutual aid and protection, that their distribution of a handbill entitled "Is Charlotte a Second-Class City?" did not constitute justification for such discharge; and that by refusing to bargain collectively with the Union on April 30, 1950 and at all times thereafter the Company had violated Section 8 (a)(5) of the Act. The Trial Examiner recommended that the Company be ordered to cease and desist from such unfair labor practices and take other affirmative action, including reinstatement of the discharged men.

7. The case was transferred to the Board, exceptions were filed by the Company and oral argument was heard before the Board on April 3, 1951.

8. On June 26, 1951 the Board issued its Decision and Order, adopting the Trial Examiner's findings but with a number of changes in which the Board differed from the Trial Examiner. The Board dismissed the com-
A-4 plaint insofar as it alleges that the Company violated Section 8 (a)(1) and (3) of the Act by discharging those individuals who were actually implicated in the publication and distribution of the handbill because they went beyond the pale in performing such acts. The Board also dismissed the allegations of the complaint insofar as they alleged that the Company had refused to bargain with the Union in violation of Section 8 (a)(5) of the Act. The Board found that Leonard Flowers had not been implicated in the publication and distribution of the handbill and ordered his reinstatement. The Board also found the Company guilty of certain other unfair labor practices, ordered the Company to cease and desist from such unfair labor practices and to post appropriate notices. One member of the Board dissented on the ground that the publication and distribution of the handbill was not justification for the discharge because neither the means nor the object of the concerted activity was unlawful.

9. The points upon which Petitioner intends to rely for the relief herein requested are as follows:

(a) The Board's dismissal of the complaint insofar as it alleges the Company violated Section 8 (a)(1) and (3) of the Act by discharging the employees engaged in the publication and distribution of the handbills is contrary to law and represents the substitution of administrative discretion for, and in place of, the application of law. Since the Board found that the ultimate purpose of the publication and distribution of the handbill was lawful and adopted the Trial Examiner's finding that the employees believed the facts stated in the handbill to be truthful, the Board erred in failing to conclude that the Company had violated Sections 8 (a)(1) and (3) by discharging such employees.

(b) The Board erred in failing to adopt the Trial Examiner's finding that the Company had refused to bargain from and after April 10, 1950 because the alleged loss of majority by the Union was due to the unfair labor practices of the Employer i.e. the discharge of the Union mem-
A-5 bers in violation of Section 8 (a)(1) and (3) of the Act.

More specifically, the Board erred by reason of the following:

1. The rule which has been well established by the courts that the protection of Section 7 does not embrace concerted activity undertaken for an unlawful objective, or protect employees against discharge for resorting to unlawful means in pursuit of their collective bargaining ends, however lawful, has been varied by the Board without authority of law by substituting the vague, indefinite and non-administrable standards of "indefensibility" and "beyond the pale" for "unlawful means".

2. The conclusions of the Board that the concerted activity of the employees in this case were "hardly less 'indefensible' than acts of physical sabotage" and that such activity "caused Respondent to apprehend a loss of advertising revenue due to dissatisfaction with its television service" are neither findings of fact nor rulings of law supporting the dismissal of the complaint insofar as it alleged a violation of the Act by reason of the discriminatory discharges. Such conclusions are not supported by substantial evidence in the record considered as a whole.

3. On the contrary, the finding of the dissenting member of the Board that the handbill did not and could not result in any present financial loss to the Company is supported by substantial evidence in the record considered as a whole.

4. The Board erred in failing to apply the rule of law that the lawful concerted activity of employees in a labor dispute is protected whether or not they are acting in the formal capacity of a trade union.

5. The Board erred in failing to find that the Company did not establish by a preponderance of the evidence, A-6 each dischargee's guilt, even under the theory of law adopted by the Board as to the scope of protection afforded by Section 7 of the Act.

WHEREFORE, Petitioner Prays:

1. That a certified copy hereof be served according to law upon the Respondent, National Labor Relations Board, and that the Respondent National Labor Relations Board, be required in conformity with law to certify to the Court a transcript of the record wherein its order was entered, including the testimony, evidence and exhibits taken, the pleadings, the Intermediate Report of the Trial Examiner, and the Exceptions taken thereto, and the findings, conclusions, decision and order of the said National Labor Relations Board.

2. That said proceedings, findings, conclusions, decision and order of the Board be reviewed and that the order of the Board be modified to require the Company, its officers, agents, successors or assigns, to cease and desist from refusing to bargain collectively with Local Union No. 1229, International Brotherhood of Electrical Workers, A.F.L. as the exclusive bargaining representative of the Company's employees in the appropriate unit, with respect to rates of pay, wages, hours of employment and other conditions of employment and to take the following affirmative action:

(a) Offer to George B. Patterson, Jr., S. J. Sullivan, Walter S. Hill, T. W. Perkins, Robert R. Hilker, A. O. Richardson, Allen W. Hingle and E. L. Stroupe immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed, and make them whole for any loss of pay they may have suffered by reason of the Company's discrimination against them, and

A-7 (b) Make whole Sterling L. Hicks for any loss of pay he may have suffered by means of the Respondent's discrimination against him for the period September 3, 1949 to January 12, 1950.

3. That a decree be entered enforcing the parts of the order of the Board here involved as modified pursuant to the preceding paragraph.

4. That this Court exercise its jurisdiction and grant to Petitioner such other and further relief in the premises as the rights and equities of the cause may require and to the Court may seem just and proper.

Respectfully submitted,

/s/ Louis Sherman
1200 - 15th St., N. W.
Washington, D. C.

Attorney for Local Union No. 1229, I.B.E.W. (A. F. of L.)

November 3, 1951

A-8 Filed Dec. 19, 1951. Joseph W. Stewart, Clerk

In the United States Court of Appeals
for the District of Columbia Circuit

No. 11,235

Local Union No. 1229, International Brotherhood of Electrical Workers, *Petitioner*,

v.

National Labor Relations Board, *Respondent*.

ON PETITION TO REVIEW AND MODIFY IN PART AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Answer of the National Labor Relations Board to the Petition to Review and Modify in Part an Order of the National Labor Relations Board

To the Honorable, the Judges of the United States Court of Appeals for the District of Columbia Circuit:

Comes now the National Labor Relations Board, herein called the Board, and pursuant to the National Labor Relations Act (61 Stat. 136, 29 U.S.C., Supp. IV, Sec. 151, *et seq.*), files this answer to the petition to review and modify in part an order of the Board.

1. The Board admits the allegations contained in paragraphs 1, 2, and 4, appearing on pages 1 and 2 of the petition.

2. The Board denies the allegations contained in paragraph 3, (page 2) of the petition.

3. Answering the allegations contained in the section setting forth the "nature of the proceedings" before the Board (pages 2, 3, and 4 of the petition), the Board prays reference to the certified copy of the entire record of the proceedings before the Board, filed herein, for a full and exact statement of the pleadings, evidence, exhibits, rulings, findings of fact, conclusions of law and order of the Board, and all other proceedings had in this matter before the Board.

A-9 4. The Board denies each and every allegation of error contained in paragraphs 1 through 5 (pages 5 and 6) of the petition.

5. The Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act.

WHEREFORE, the Board respectfully prays this Hon-

orable Court that the petition, insofar as it prays that the Board's order be modified, be denied.

/s/ A. Norman Somers
Assistant General Counsel
National Labor Relations Board

Dated at Washington, D. C.
this 13 day of December, 1951.

A-10 **In the United States Court of Appeals for the District of Columbia Circuit**

Local No. 1229, International Brotherhood of Electrical Workers, *Petitioner*,

v.

National Labor Relations Board, *Respondent*.

No. 11,235

CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's answer and request for enforcement together with annexed certificate of service, index to record, and certificate of record, in the subject matter, were this day served upon Louis Sherman, Esquire, International Brotherhood of Electrical Workers, 1200 15th Street, N. W., Washington, D. C., Counsel for the Petitioner, and Guthrie, Pierce & Blakeney, Att: Whiteford S. Blakeney, Esquire, Johnston Building, Charlotte, North Carolina, and Cochran, McClenaghan & Miller, Att: F. T. Miller, Jr., Esq., Law Building, Charlotte, North Carolina, Counsel for Respondent

before Board; by sending the same to them, by registered mail, to the addresses listed above.

/s/ Rose Mary Filipowicz
Managing Attorney

Subscribed and sworn to before me
this 13 day of December, 1951.

(SEAL) Eugene A. Keeney
Notary Public, District of Columbia.

My Commission Expires July 31, 1956.

1205 Charlotte, N. C.
D-5140

United States of America
Before The National Labor Relations Board

In the Matter of

Jefferson Standard Broadcasting Company

and

International Brotherhood of Electrical Workers,
AFL, Local 1229

Case No. 34-CA-170

Decision and Order

On August 21, 1950, Trial Examiner Alba B. Martin issued his Intermediate Report in the above-entitled proceeding finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (a)(1), (3), and (5) of the Labor Management Relations Act, 1947, and recommending that the Respondent

cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Respondent requested oral argument and filed its "Statement of Objections and Exceptions to the Intermediate Report."

On January 31, 1951, the Board granted the Respondent's request for oral argument, which was heard by the Board on April 3, 1951, and in which the Respondent, the General Counsel, and the Union participated.

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, the brief of the General Counsel to the Trial Examiner, the oral argument before it, and the entire record in the case, and hereby adopts the Trial Examiner's findings of fact with the additions and corrections noted below.

For the reasons set forth herein, however, the Board does not adopt the Trial Examiner's conclusions and recommendations set forth in section III of the Intermediate Report except as specifically indicated herein.

The Respondent asserts in its statement of objections and exceptions that the Trial Examiner disclosed partisanship in favor of the Union and against the Respondent "both in the record and in the Intermediate Report." We find these assertions unjustified.[1]

1206

1. On August 20, 1949, the Respondent's chief engineer, Minor,[2] rated transmitter technician Hicks' service "unsatisfactory." This endorsement was placed upon Hicks' Federal Communications Commission license as a "radio telephone operator first class," and the license was mailed to the

[1] As to the hearing we note specifically that the Respondent, on the record, commended the Trial Examiner for his cooperation and patience.

[2] Inadvertently the Trial Examiner referred to Minor as the chief "electrician" at WBT for "at least 10 years." Minor had been the chief engineer at the station for approximately 6 years.

Commission with a letter setting out instances of alleged neglect by Hicks. The license was then due for renewal and was requisite to Hicks' employment as a transmitter technician. Before rating Hicks the Respondent had been advised by the Commission that, under the Commission's regulations, the rating was to be confined to the quality of performance of technical duties without reference to "other aspects of an operator's relationship with his employer." Despite the unsatisfactory rating, the Commission renewed Hicks' license.

The Trial Examiner found that Hicks was not rated by the Respondent "for his performance of duties," with which we agree.[3] We do not, however, agree with his conclusion that "the giving of the 'unsatisfactory' endorsement to Hicks was clearly calculated to discourage any further concerted activity of the employees toward obtaining an arbitration clause suitable to them," as we consider this conclusion at variance with the General Counsel's concession at the hearing—as well as the Trial Examiner's own finding concerning the 8 (a) (5) issue—that all bar-
1207 gaining between the Respondent and the Union was carried on in good faith up to and including September 3, 1949. We believe that Hicks was rated unsatisfactory simply because of the militancy of his union leadership—described by the Trial Examiner at some length—which was well known to the Respondent and had become a source of annoyance to it. We note from the record that offenses similar to those ascribed to Hicks by the Respondent in its letter to the Commission were overlooked by it in rating other technicians. We note also the credited testimony of

[3] The Respondent excepted to the General Counsel's pleading, in general terms, a violation of Section 8 (a) (1) of the Act with respect to Hicks' rating, but did not act upon the Trial Examiner's suggestion—made during the presentation of testimony on that issue—that it ask for additional time at the end of the hearing if surprised by the development of the issue. The Respondent has not suggested that it was prejudiced in this regard and we find that the matter has been fully litigated. See: *N.L.R.B.* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 349; *Goodyear Aircraft Corporation*, 63 NLRB 1340, 1341; *Pacific Mills*, 91 NLRB No. 3.

Patterson that Minor admitted that Hicks was a competent engineer, but that he intended to endorse Hicks' license unsatisfactory for reasons other than his performance of technical duties.[4] We find that by giving Hicks this rating, the Respondent interfered with, coerced, and restrained its employees in the exercise of their right to self-organization and to engage in other concerted activities for purposes of collective bargaining and other mutual aid and protection in violation of Section 8 (a) (1) of the Act.[5]

2. On September 3, 1949, Respondent discharged 10 of its technical employees for having published and distributed the so-called "second-class" handbill, set forth in the Intermediate Report, in the course of peaceful picketing sponsored by the Union which was otherwise concededly lawful and protected under the Act. The Trial Examiner found that by this action Respondent violated Section 8 (a) (1) and (3) of the Act because, he concluded, the handbill to which the Company took exception was a protected phase of the employees' union and concerted activity. The question before us is whether this conclusion rests upon a proper construction of Section 7 of the Act. That section guarantees to employees the right to engage in "concerted activities for the purpose of collective bargaining or other mutual aid or protection." However, as this Board and the
1208 courts have long held, it does not embrace concerted activity undertaken for an unlawful objective, or protect employees against discharge for resorting to "indefensible" means (such as sit-down strikes, sabotage, "violence

[4] Other faults which the Respondent found with Hicks as an employee, such as Hicks' alleged discourtesy in answering the telephone on a specific occasion, his holding a union meeting on one occasion while the only man on duty, and his feud with his supervisor Carey—admittedly not solely Hicks' fault—may also have contributed to Respondent's rating Hicks differently from its other technicians. But we are convinced that the compelling reason was the Respondent's prejudice against Hicks for his known union activities.

[5] *Member Reynolds is not* convinced that Hicks' union activity as such motivated the Respondent in giving him an unsatisfactory rating. Accordingly, he does not concur in the above finding that the Respondent violated Section 8 (a) (1) of the Act.

or similar conduct") in pursuit of their collective ends, however lawful.[6]

The facts essential to an appraisal of the objectives sought by the employees in this case, and the means they adopted, are as follows:

The Union, which had represented the technical employees at the Company's radio transmitters for several years, began negotiations for a new contract in or before January 1949, and on May 9, 1949, was certified by the Board as the statutory representative of the employees in the bargaining unit. Early in July, the Union and the Company reached an impasse and suspended negotiations because of their inability to agree upon a provision covering arbitration of disputes over the discharge of employees for "cause." On or about July 9, the Union commenced picketing Respondent's downtown place of business in Charlotte, without calling a strike.[7] By plac-

[6] In *Harnischfeger Corporation*, 9 NLRB 676 at 686, decided nearly 13 years ago, the Board said:

"Section 7 of the Act expressly guarantees employees the right 'to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.' We do not interpret this to mean that it is unlawful for an employer to discharge an employee for *any* activity sanctioned by a union or otherwise in the nature of collective activity. The question * * * is * * * whether * * * particular activity was so indefensible, under the circumstances, as to warrant [the employer in discharging the participants]." (Italics in original.)

Compare the Board's recent observations in *The Hoover Company*, 90 NLRB No. 201:

"It is too well established * * * to require extended discussion that not every form of concerted activity which falls within the literal language of Section 7 is given protection, so as to immunize those who participate in it against discharge or other discipline. [Limited exceptions upon the broad language of Section 7 are recognized in instances where] the means employed involved violence or similar conduct, or where the objectives sought were inconsistent with the terms or the clearly enunciated policy of this Act or other Federal statutes. * * *"

And see, for instances of unlawful means: *N.L.R.B.* v. *Fansteel Metallurgical Corporation*, 306 U. S. 240; *Southern S. S. Company* v. *N.L.R.B.*, 316 U. S. 31; *Scullin Steel Company*, 65 NLRB 1294, 1317-1318; *International Union, U.A.W.A., AFL, Local 232 et al.* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, 257, 258; *Elk Lumber Company*, 91 NLRB No. 60.

[7] We agree with the Trial Examiner that the employees' failure to withhold their labor did not place their picketing outside the protective scope of Section 7 of the Act. See *The Hoover Company*, 90 NLRB No. 201.

ards and handbills, the pickets appealed to the public, in the name of the Union, to support the employees' stand in the labor dispute. This pressure evidently proved unavailing, for within a few weeks after the Company had placed its newly installed television broadcast facilities into operation, the Union resolved to get "tough,"[9] and published the "second-class" handbill which provoked the discharges.

The thesis of this handbill, which the Union distributed during a 10-day period beginning on August 24, was that Respondent was mulcting the public by furnished technically inadequate, "second-class," television service.[9] Its text made no reference to the labor dispute which had occasioned the picketing. It was distributed widely throughout the business section of Charlotte, not only at the picket line, but elsewhere, in places such as busses, barber shops and restaurants.[10] Although drafted and approved by the Union's officers and executive committee, the handbill
1210 did not bear the Union's name, but was signed, sim-

[9] As recited by the Trial Examiner, this characterization of the Union's new policy was supplied by Perkins of the Union's executive committee in handing copies of the second-class handbill to Covington and Treadwell, the Respondent's promotion manager and program manager, respectively.

[9] The text of the handbill was:

IS CHARLOTTE A SECOND-CLASS CITY?

You might think so from the kind of Television programs being presented by the Jefferson Standard Broadcasting Co. over WBTV. Have you seen one of their television programs lately? Did you know that all the programs presented over WBTV are on film and may be from one day to five years old. There are no local programs presented by WBTV. You cannot receive the local baseball games, football games or other local events because WBTV does not have the proper equipment to make these pick-ups. Cities like New York, Boston, Philadelphia, Washington receive such programs nightly. Why doesn't the Jefferson Standard Broadcasting Company purchase the needed equipment to bring you the same type of programs enjoyed by other leading American cities? Could it be that they consider Charlotte a second-class community and only entitled to the pictures now being presented to them?

WBT TECHNICIANS

[10] We note a typographical error in the omission of "and" from a sentence of the Intermediate Report, on page 6, describing the distribution. The sentence should read: "The handbills were distributed by pickets on the picket line *and* at the main square. . . ."

ply "WBT TECHNICIANS".[11] It occasioned widespread comment in the community, and caused Respondent to apprehend a loss of advertising revenue due to dissatisfaction with its television broadcasting service.[12]

In short, the employees in this case deliberately undertook to alienate their employer's customers by impugning the technical quality of his product. As the Trial Examiner found, they did not misrepresent it, at least willfully, the facts they cited to support their disparaging report. And their ultimate purpose,—to extract a concession from the employer with respect to the terms of their employment—was lawful. That purpose, however, was undisclosed; the employees purported to speak as experts, in the interest of consumers and the public at large. They did not indicate that they sought to secure any benefit for themselves, *as employees*, by casting discredit upon their employer.

In our judgment, these tactics, in the circumstances of this case, were hardly less "indefensible" than acts of physical sabotage.[13] The Board has held, and we reaffirm, that the Act protects employees against employer reprisal when they speak freely "on organizational matters" (to borrow the Trial Examiner's expression), and in one way or another denounce their employer for his conduct of labor relations or affairs germane to the employment relationship.[14] Moreover, employees acting in concert may

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[11] Preceding handbills and placards bore the Union's official name.

[12] Although without significance to our finding, we correct the Trial Examiner's summation of the evidence in the last sentence of page 6 of the Intermediate Report. The record does contain evidence that dealers immediately communicated to the Respondent their concern over the effect of the handbill.

[13] See *Brown Radio Service and Laboratory*, 70 NLRB 476, 478.

[14] *Atlantic Towing Company*, 75 NLRB 1169, 1172, revd. 180 F. 2d 726, 182 F. 2d 625 (C. A. 5); *Illinois Tool Works*, 61 NLRB 1129, 1151-1153, enfd. 153 F. 2d 811 (C. A. 7); *Peter Cailler Kohler Swiss Chocolates Company, Inc.*, 33 NLRB 1170, enfd. 130 F. 2d 503 (C. A. 2); *Westinghouse Electric Corporation*, 77 NLRB 1058, revd. on other grounds, 179 F. 2d 507 (C. A. 6); *American Shuffleboard Co.*, 92 NLRB No. 187; *Electronics Equipment Co.*, 94 NLRB No. 19. We respectfully disagree with the opinion of the Court of Appeals for the Fifth Circuit in the *Atlantic Towing* case, insofar as the Court implied that the truth of employee speech, irrespective of the context or the motives of the speaker, is the test of its protected character.

exhort consumers to refrain from purchasing their employer's product unless and until he alters his labor
1211 policy or practices.[15] But this is a different case. Here, the subject matter of the employees' verbal attack upon the employer was not related to their interests *as employees*. And the gist of their appeal to the public was that the employer ought to be boycotted because he offered a shoddy product to the consuming public—not because he was "unfair" to the employees who worked on that product. Even in the *Peter Cailler Kohler Swiss Chocolates* case, upon which our dissenting colleague relies, the employees' broadside, superficially unrelated as it was to any labor dispute or matter pertaining to the employer's labor relations,[16] did not go so far as to suggest that consumers ought to avoid the employer's product because it was of inferior quality.[17]

For these reasons, without attempting to formulate a test which will decide every imaginable case involving similar questions as to the scope of Section 7, we hold that the employees in this case went beyond the pale when they published the "second-class" handbill.[18] We shall therefore dismiss the complaint insofar as it alleges that the Respondent violated Section 8 (a) (1) and (3) of the Act by discharging those individuals who were actually implicated in the publication and distribution of that leaflet.

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[15] See the Board's decisions in the *Hoover* and *Electronics Equipment* cases, footnotes 6 and 14, above.

[16] 130 F. 2d 503 (C. A. 2), above. However, the publication in that case was signed in the name of the employees' labor organization, and was in the form of a resolution passed at a meeting of that labor organization.

[17] We subscribe, of course, to the general philosophy expounded by the Court in construing and applying Section 7 in that case. But we think that Judge Learned Hand's eloquent passage, wrested from its context, does not call for literal reading here.

[18] We do not reach and do not decide the question, secondarily raised by Respondent, whether the handbill in question constituted actionable defamation. See *Electronics Equipment*, above.

We also do not decide whether the disparagement of product involved here would have justified the employer in discharging the employees responsible for it, had it been uttered in the context of a conventional appeal for support of the union in the labor dispute.

3. Because of his conclusion that the Respondent was not entitled to discharge its employees on these facts, the Trial Examiner did not resolve the question whether Stroupe, Hilker, and Flowers, three of the dischargees, actually engaged in the conduct which the Respondent assigned as the reason for the discharges and which the Board finds unprotected under Section 7 of the Act. At the hearing the General Counsel claimed that they did not.

1212 Stroupe was president of the local Union and both he and Hilker were members of the executive committee of the local. Although both testified that they were out of the city and did not distribute the handbill, neither one denied Hicks' testimony that "each" member of the executive committee approved the handbill for distribution after printing. We find, therefore, that Stroupe and Hilker did approve publication of the handbill, thereby engaging in the activity which we find unprotected.[19]

Flowers, however, was not an officer of the union or member of its executive committee. He testified that he did not distribute this handbill because he individually "didn't quite approve of it," and this testimony was not convincingly refuted. Except for the testimony of Minor, whom the Trial Examiner discredited in another connection, that "all" of the 10 dischargees [20] distributed the handbill, the Respondent offered only the testimony of two of its executives that

[19] It is thus unnecessary to resolve the conflict that arises from the testimony of other witnesses that Stroupe and Hilker did *distribute* the handbill. The Trial Examiner found that Stroupe first saw the handbill after it had "already been distributed." To the extent that this implies that Stroupe had not approved the handbill prior to or during distribution, we do not adopt the Trial Examiner's finding. Hicks testified that the first 2,000 of the handbills were received from the printer on August 23. Stroupe, after testifying that he was absent from Charlotte from Wednesday morning, August 24, to early Saturday morning, August 27, said that the first time he saw the handbill was Monday, August 29, "I think"; that he didn't remember where he saw it because he saw it "so many places," that actually the "so many places" meant his own house, Hicks' house and "possibly" that "we" had the handbills on the picket line Monday the 29th.

[20] Minor was not asked specifically about Flowers, but he failed to name Flowers in attempting to enumerate those whom he had seen.

Flowers was seen distributing handbills at a time when the sidewalk was littered with the "second class" handbill.

On this inconclusive record, we can scarcely find that Flowers actually engaged in the misconduct imputed to him by the Respondent, thereby forfeiting the statutory protection to which he was entitled as a participant in union and concerted activity which was otherwise lawful. We therefore find that the Respondent, having failed to establish the facts essential to its defense in Flowers' 1213 case,[21] violated Section 8 (a) (1) and (3) of the Act by discharging him.[22] Whether this discharge be regarded as a violation of Section 8 (a) (1) or of Section 8 (a) (3), we find it necessary to order Flowers' reinstatement with back pay in order to effectuate the policies of the Act.

4. As stated above, negotiations between the Union and the Respondent for a new collective bargaining contract were suspended early in July 1949, because the parties arrived at an apparently hopeless impasse over the question of providing in the contract for arbitration in cases of discharge for "cause." Except on the occasion in September, described in the Intermediate Report, when the Union proposed to Respondent that negotiations be resumed *after* Respondent had reinstated the 10 discharged employees and

[21] In cases where, as here, an employer discharges employees for engaging in a strike or other form of concerted activity which is not *per se* unlawful or beyond the protective scope of Section 7, and justifies his action on the ground that the employees forfeited the protection of the Act by engaging in particular misconduct, the burden is on the Employer to establish, by a preponderance of the evidence, the actual fact of each dischargee's guilt. *Stewart Die Casting Corp* v. *N.L.R.B.*, 114 F. 2d 849, 856 (C. A. 7), cert. den. 312 U. S. 680; *Home Beneficial Life Insurance Co.* v. *N.L.R.B.*, 159 F. 2d 280, 284-285 (C. A. 4), cert. den. 332 U. S. 758; *Mid-Continent Petroleum Corp.*, 54 NLRB 912, 933; *Porto Rico Container Corporation*, 89 NLRB No. 205. See also, *Aladdin Industries, Inc.*, 22 NLRB 1195, 1216-1217; *Ohio Associated Telephone Company*, 91 NLRB No. 162.

[22] *Member Reynolds* is of the opinion that the credible and mutually corroborative testimony of the Respondent's executives warrants a finding that Flowers, like the other nine dischargees, engaged in the unprotected activity attributed to him. He would therefore, dismiss the complaint insofar as it alleges Flowers' unlawful discharge.

submitted their cases to arbitration—a proposal which Respondent rejected—the Union made no further attempt to bargain collectively with the Company until March 1950, a week before the hearing in this case was scheduled to begin. On March 6 and 7, Union agent Adair told Blakeney, Respondent's counsel, and Walker, an executive of the Company, that the Union desired to meet with the Respondent for the purpose of "resum[ing] negotiations."[23] He was told that it would be necessary to refer the matter
1214 to Crutchfield, who was then confined at his home, convalescing from a major surgical operation. On March 13, the day the hearing opened, and again on March 22, a few days after the hearing closed, Adair saw Crutchfield himself and repeated his request for a meeting. On each occasion, Crutchfield temporized, stating on March 13 that he would prefer to wait until the hearing was concluded, and on March 22 that he was about to leave town for a recuperating vacation of about 2 weeks.[24]

Meanwhile, on March 15 under an amendment of the charge and complaint, the General Counsel's representative at the hearing introduced a contention that Respondent had violated Section 8 (a) (5) of the Act, as well as Section 8 (a) (1) and (3), by discharging the 10 union members on September 3. The theory of this new contention was that Respondent's action on September 3 was designed to destroy the Union's majority and thus to relieve Respondent of its obligation to bargain collectively with the Union. In his Intermediate Report, the Trial Examiner—correctly, in our opinion—rejected this theory, but he did find that Respondent should have granted the Union's March requests for a bargaining conference within a reasonable time, and

[23] According to Adair's own testimony, he did not enlarge upon this statement by indicating upon what subject matter and upon what basis he desired to "resume negotiations," except that by his remark to Blakeney on March 7, which we quote below in the text, he suggested that he was interested in discussing settlement of the Union's pending charges.

[24] Actually, Crutchfield was away for 3 weeks. His plans before leaving for Florida had not been definite. However, he told Walker that the Union might call, and instructed Walker to notify him if the Union's call materialized.

that its failure to get in touch with the Union for this purpose by April 30 (3 weeks after Crutchfield's return) was a breach of its statutory obligation to recognize and deal with the Union as the certified representative of its technical employees—including the dischargees.

We do not concur in this finding, for we are unable to find on this record that the Union made a *bona fide* and effective request for bargaining which contemplated negotiation of a trade agreement in behalf of the employees who constituted the bargaining unit in the spring of 1950. Rather, there is much to indicate that the Union's only purpose, in approaching the Respondent in March, was merely to negotiate some kind of settlement under which the
1215 discharged employees would be reinstated or, as Crutchfield evidently surmised, to elicit from Respondent some admission or statement which would buttress the Union's contention that the Respondent had violated the Act 6 months before. The Union's failure, throughout the 8 months preceding the March conversations, to suggest any revision of its stand on the controversial subject of arbitrating discharges for "cause" points to this conclusion. The telegraphic proposal it submitted to the Respondent in September also indicates its exclusive preoccupation with the cause of the discharged employees and its unaltered determination to have discharge cases settled by the procedure of arbitration—the very subject on which the parties had deadlocked at the time when negotiations for a new contract were suspended.[25] Moreover, when Adair spoke to Blakeney on March 7, he said only that he "thought" that if the parties could have a meeting they "could resolve the issues that would make the hearing un-

[25] A good-faith bargaining impasse ordinarily connotes the futility of further negotiations. See *Central Metallic Casket Co.*, 91 NLRB No. 88. This case is distinguishable on its facts from those in which it has been held that the mere passage of time or change in circumstances after an impasse makes the resumption of negotiations appear useful rather than futile. *Jeffery-DeWitt Insulator Co. v. N.L.R.B.*, 91 F. 2d, 134, 139-140; *The American Laundry Machinery Company*, 76 NLRB 981, 983, enfd. without opinion 174 F. 2d 124 (C. A. 6).

necessary." Neither then nor in any other contact with the Respondent throughout this period, so far as the record shows, did Adair particularize his request for a negotiating conference or otherwise indicate that he had anything in mind except settlement of the old dispute.[26]

The foregoing circumstances, in our opinion, substantiate Crutchfield's testimony that on March 22, when Adair approached him, he did not think that Adair was "serious" about the proposal for further negotiations, believ-
1216 ing that the union representative was only "trying to cook up another charge" against the Company.[27] And, in this context, it seems quite probable that Crutchfield told Adair on that occasion, as he testified, that he would be glad to talk to the Union about a bargaining conference *if* the Union cared to get in touch with him again after his vacation trip. Adair testified that it was Crutchfield who agreed to make the next move, by setting a date for a conference and notifying the Union.

The Trial Examiner did not resolve this conflict, for it was immaterial under his view of the case. However, as we appraise the circumstances leading up to the March 22 conversation, it was incumbent upon the Union to clarify its position in order to cast on the Company any peremptory duty to set a conference date. And, as we cannot find on this inconclusive record that the Union did clarify its position, or that the Company assumed the initiative by promising to get in touch with the Union, we can scarcely

[26] This is not to imply that the Board discourages voluntary settlement of unfair labor practice charges. On the contrary, the Board's regional agents constantly assist in the informal adjustment of disputes which have led to the filing of charges under the Act. But *Section 8 (a) (5)* does not require an employer to enter into negotiations with a union for the sole purpose of settling unfair labor practice charges if the employer prefers to test the legality of his conduct by a Board decision.

[27] Even when it later filed a new charge alleging that the Respondent had unlawfully refused to bargain on or about March 6, the Union's theory still seemed to be that Respondent's failure to bargain in March 1950 was unlawful *because*, and only because, the discharges of September 1949 were unlawful. At the reopened hearing in July 1950, the General Counsel's representative stated several times that this was his theory.

find that the Company's inaction during the next 7 weeks (while the Union also remained silent) constituted a refusal to bargain.

In its letter of May 13, 1950, answering the Union's letter of May 10, the Respondent did unequivocally refuse to bargain with the Union unless and until the Union produced proof that it represented a majority of the employees in the bargaining unit.[28] This, however, was not a violation of the Act, for, as we have found, the action by which the Respondent caused the Union's loss of majority was not an unfair labor practice,[29] and the Union's certification of May 9, 1949, no longer barred an effective challenge of its status as the statutory bargaining agent.[30]

1217 For these reasons, we shall dismiss the Section 8 (a) (5) allegations of the complaint.

5. The remedy

Having found that the Respondent has engaged in the unfair labor practices set forth above, we shall order that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Respondent having discharged Leonard Flowers because of a mistaken belief that he engaged in concerted activity unprotected by Section 7 of the Act, we shall order that the Respondent offer to him immediate and full reinstatement to his former or a substantially equivalent position,[31] with-

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[28] At the reopened hearing in July, the Union admitted that it had no members in the bargaining unit as of March 1950, having suspended the five or six members who continued in the Respondent's employ after the September discharges.

[29] Except insofar as Flowers was mistakenly included in the list of dischargees.

[30] Compare *Arthur A. Borchert, d/b/a West Fork Cut Glass Company*, 90 NLRB No. 145, enfd. April 7, 1951, (C. A. 4), 27 LRRM 2579, and *Jersey City Welding & Machine Works, Inc.*, 92 NLRB No. 85, exemplifying the well-established rule that a union's status as a statutory bargaining representative is normally unassailable during the 1-year period following a Board certification.

[31] *The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch*, 65 NLRB 827.

out prejudice to his seniority and other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of the Respondent's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from September 3, 1949, the date of the discrimination against him, to the date of the offer of reinstatement, less his net earnings during said period.[32] Loss of pay shall be determined by deducting from a sum equal to that which this employee would normally have earned for each quarter or portion thereof, his net earnings, if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter. The quarterly periods described herein shall begin with the first day of January, April, July, and October. We shall also order that Respondent make available to the Board upon request payroll and other records in order to facilitate the checking of the amount of back pay due.[33]

1218 The Respondent's "unsatisfactory" rating of Hicks in violation of the Act having resulted in no calculable detriment to him at this time in view of the Federal Communications Commission's renewal of his license, we do not adopt the remedy recommended by the Trial Examiner. Instead we shall order that the Respondent shall cease and desist from rating its technicians for purposes of their Federal Communications Commission license renewal with reference to their union membership and activities.

Conclusions of Law

We adopt the Trial Examiner's conclusions of law numbers 1 through 4, rejecting the remainder. In addition, we reach the following conclusions of law:

5. By giving Sterling L. Hicks an "unsatisfactory" rat-

[32] *Crossett Lumber Co.*, 8 NLRB 440, 497-8; *Republic Steel Corporation* v. *N.L.R.B.*, 311 U. S. 7.

[33] *F. W. Woolworth Company*, 90 NLRB No. 41.

ing on his operating license from the Federal Communications Commission the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, and has engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. By discriminating in regard to the hire and tenure of employment of Leonard Flowers, thereby discouraging membership in International Brotherhood of Electrical Workers, AFL, Local 1229, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act, and has also, by this same conduct, interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

8. The Respondent has not engaged in unfair labor practices by:

1219 (a) Discharging George B. Patterson, Jr., S. J. Sullivan, Walter S. Hill, T. W. Perkins, Robert R. Hilker, A. O. Richardson, Allen W. Hingle, E. L. Stroupe, and Sterling L. Hicks, for their part in publishing and distributing the "second class" handbill; and

(b) Refusing to bargain with International Brotherhood of Electrical Workers, AFL, Local 1229.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent Jefferson Standard Broadcasting Com-

pany, Charlotte, North Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Rating its transmitter technicians for purposes of their Federal Communications Commission license renewals with reference to their membership in, or activities on behalf of, International Brotherhood of Electrical Workers, AFL, Local 1229, or any other labor organization of its employees.

(b) Discouraging membership in Local Union 1229, International Brotherhood of Electrical Workers, AFL, or any other labor organization of its employees, by discriminating in regard to the hire and tenure of their employment or any term or condition of employment.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Brotherhood of Electrical Workers, AFL, Local 1229, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

1220 2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer Leonard Flowers immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole in the manner set forth in the section entitled "The Remedy" for any loss of pay he may have suffered by reason of the Respondent's discrimination against him.

(b) Upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due and the right of reinstatement under the terms of this Order.

(c) Post in conspicuous places at the Respondent's main control room, 608 Wilder Building, Charlotte, North Carolina, its main transmitter, Nation's Ford Road, Charlotte, North Carolina, its FM transmitter (RAMLO station), Gastonia, North Carolina, and its satellite transmitter, Shelby, North Carolina, copies of the notice attached hereto, marked "Appendix A."[24] Copies of said notice to be furnished by the Regional Director for the Thirty-fourth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and be maintained by it for at least sixty (60) consecutive days thereafter in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Thirty-fourth Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

1221 IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the Respondent discriminatorily discharged George B. Patterson, Jr., S. J. Sullivan, Walter S. Hill, T. W. Perkins, Robert R. Hilker, A. O. Richardson, Allen W. Hingle, E. L. Stroupe, and Sterling L. Hicks, in violation of Section 8 (a) (3) and 8 (a) (1) of the Act, and insofar as it alleges that the Respondent re-

[24] In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words: "A DECISION AND ORDER," the words: "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING."

fused to bargain with International Brotherhood of Electrical Workers, AFL, Local 1229, in violation of Section 8 (a) (5) of the Act, be, and it hereby is, dismissed.

Signed at Washington, D. C., June 26, 1951.

PAUL M. HERZOG, *Chairman*
JOHN M. HOUSTON, *Member*
JAMES J. REYNOLDS, JR., *Member*
PAUL L. STYLES, *Member*

NATIONAL LABOR RELATIONS BOARD

(SEAL)

ABE MURDOCK, MEMBER, dissenting in part:

I cannot agree with the conclusion of my colleagues of the majority that the Respondent did not commit an unfair labor practice violative of Section 8 (a) (1) and (3) of the Act when it discharged a group of employees for publication and distribution of the "second-class city" handbill; nor with their conclusion that the Respondent did not refuse to bargain with the Union in violation of Section 8 (5) of the Act. I would adopt the Trial Examiner's conclusions on these violations.

Before discussing the issue in detail, I would note at the outset that the holding of the majority that the distribution of the "second-class city" handbill is not concerted or union activity protected by the Act is one of the most important decisions dealing with that subject which the Board has ever issued. It should be recognized as a decision of far reaching significance. I find it a startling decision—startling because it necessarily sets aside principles which this Board with court sanction has heretofore recognized as the proper test of protected concerted activity; startling
1222 because it has shriveled the previously recognized area of statutory protection for concerted activities and left employers, employees, and the Board itself with-

out any certain standards to mark the remaining greatly circumscribed area.

First, what are the facts? What were the contents of the handbill, the circulation of which my colleagues find was "hardly less 'indefensible' than acts of physical sabotage"? It reads thus:

IS CHARLOTTE A SECOND-CLASS CITY?

You might think so from the kind of Television programs being presented by the Jefferson Standard Broadcasting Co. over WBTV. Have you seen one of their television programs lately? Did you know that all the programs presented over WBTV are on film and may be from one day to five years old. There are no local programs presented by WBTV. You cannot receive the local baseball games, football games or other local events because WBTV does not have the proper equipment to make these pick-ups. Cities like New York, Boston, Philadelphia, Washington receive such programs nightly. Why doesn't the Jefferson Standard Broadcasting Company purchase the needed equipment to bring you the same type of programs enjoyed by other leading American cities? Could it be that they consider Charlotte a second-class community and only entitled to the pictures now being presented to them?

W.B.T. Technicians

It is not denied by my majority colleagues that the facts recited in the handbill with reference to the Respondent's TV programs were substantially accurate and that those who drafted and distributed it on the picket line and elsewhere believed it to be true. It is not denied that the handbill was in fact one more union weapon (specifically so recognized by the Employer although not bearing the union name) designed to exert additional pressure upon the Employer to accept the Union's position in the pending labor

dispute. This was a dispute concerning a new contract which had deadlocked over the inclusion in the contract of an arbitration provision in connection with discharges. It is not denied that the handbill did not incite or seek any violation of any law—it incited no more than a public demand for better television programs.

Inescapably we are confronted in this case with concerted and union activity for the mutual aid and protection of the technicians—activity in aid of a collective bargaining dispute with Respondent. What is the proper principle
1223 or test applicable to determine whether such presumptively protected activity nevertheless falls into one of the categories of exceptions which must be denied the protection of Section 7 of the Act. In the recent *Hoover Company* [35] case, the Board reviewed the authorities and restated the applicable principles. After referring to previously recognized exceptions, such as violent picketing, sitdown strikes, strikes against Board certifications, etc., the Board said:

> Nonetheless, it is clear that in engrafting these exceptions upon the board language of Section 7, *the Board and the courts have been particularly careful to limit such exceptions to those instances in which the means employed involved violence or similar conduct, or where the objectives sought were inconsistent with the terms or the clearly enunciated policy of this Act or other Federal statutes.* As we have had occasion to observe in the past, in the light of the history of judicial treatment of labor relations which preceded the enactment of Section 7 'it seems most improbable that Congress intended to vest this Board, or the courts in reviewing our action, with any broad discretion to determine what we or the courts might choose to consider the proper objectives of concerted activity.' We are free—indeed we are compelled—to examine the ob-

[35] 90 NLRB No. 201.

jectives of concerted activity to determine whether they are independently unlawful or inconsistent with the basic policy of this Act or of other pertinent Federal statutes. *We are not free, however, to measure concerted activity in terms of whether the conduct is wise or fair, or satisfies standards which we think desirable.*

In the instant case the Respondent's argument rests wholly upon the proposition that the conduct of a consumer boycott by employees while they continue to work and receive wages from the boycotted employer is unjust and disloyal. This may well be true, as it is true, to be sure, in certain other individual instances where employees strike, picket, or engage in other forms of concerted activity. *But absent any showing that the means employed were other than peaceful or that the objectives sought were as have been held for reasons of clear public policy to be improper, we find no authority to regard the concerted activity involved herein as unprotected.* (Emphasis supplied).

One of the main authorities relied upon by the Board in its statement of principles in the *Hoover* case was the decision of the Second Circuit Court of Appeals in the *Peter Cailler Kohler* [**] case. In an opinion by Judge Learned Hand, now widely acclaimed on his impending retirement as the foremost American jurist, that court in language peculiarly appropriate to the facts in this case, stated the applicable rule as follows:

We agree that the act does not excuse *"concerted activities," themselves independently unlawful. N. L. R. B.* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 59 S. Ct. 490, 83 L. Ed. 627, 123 A. L. R. 599; *N. L. R. B.* v. *Sands Manufacturing Co.*, 306 U. S. 332, 344, 59 S. Ct. 508, 83 L. Ed. 682; *Southern Steamship Company* v. *N. L. R. B.*, 316 U. S. 31, 62 S. Ct. 886,

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[**] *N. L. R. B.* v. *Peter Cailler Kohler Swiss Chocolate Company, Inc.*, 130 F. 2d 503.

> 86 L. Ed. 1246; *Hazel-Atlas Glass Co.* v. *N. L. R. B.*, 4 Cir., 127 F. 2d 109, 118. *But so long as the "activity" is not unlawful, we can see no justification for making it the occasion for a discharge; a union may subsidize propaganda, distribute broadsides,* support political movements, and in any other way further its cause or that of others whom it wishes to win to its side. *Such activities may be highly prejudicial to its employer;* his customers may refuse to deal with him, he may incur the enmity of many in the community whose disfavor will bear hard upon him; *but the statute forbids him by a discharge to rid himself of those who lay such burdens upon him.* Congress has weighed the conflict of his interest with theirs, and has *pro tanto* shorn him of his powers. . . . (Emphasis supplied).

It is thus clear from these decisions that concerted activity such as is here involved loses its protection only if it is "unlawful." It may be "unlawful" in the sense that the *means* used is independently unlawful. Examples of this are violence and sitdown strikes of the character involved in the *Fansteel* case as well as that in the *Southern Steamship* case, the latter involving a violation of the Federal Mutiny Act. Even where the *means* is entirely peaceful and not independently unlawful, however, an unlawful *objective* will destroy the protection which would otherwise exist. The classic example of this second type of unlawfulness is the *American News* [37] case, involving a strike to compel an employer to violate the Wage Stabilization Act.

Applying these established principles to the facts of this case it is plain that none of the elements necessary to cause a loss of the protection accorded concerted activity is here present. There was nothing unlawful about the *means* used —the distribution of handbills containing substantially truthful statements—one of the most traditional and peaceful forms of union activity in a labor dispute. There was

[37] 55 NLRB 1302.

nothing unlawful about the *objective* of the handbills, either from the standpoint of the likely immediate consequences of the distribution or from the standpoint of the ultimate action sought to be obtained thereby from the Employer. From the standpoint of ultimate objective, the handbill was an additional pressure technique to force the Employer to agree to an arbitration clause in a contract—a provision which the Employer clearly might accept without
1225 violating any law. The likely immediate consequences of the distribution insofar as the impact of the handbill on the public was concerned would be the stimulation of a public demand for better TV programs. Surely there is nothing unlawful or contrary to public policy in that objective.

My colleagues of the majority have meticulously avoided any discussion of the *tests* for protected concerted activity which have been laid down in the Board's *Hoover* case and the court's *Peter Cailler Kohler* decision and the result of the application of such tests to the facts of this case. In a footnote, after a passing tribute to the general philosophy expounded by the court and to Judge Hand's "eloquent passage," the majority simply brushes off the carefully phrased test laid down in the court's opinion, saying that it "does not call for literal reading here." They fail to indicate how else it can be read, or how they would read it. At the same time they specifically disavow any attempt to formulate a new standard by which to determine when protection is lost and rest their decision simply on their conclusion that the employees here went "beyond the pale." In adopting such an approach, it seems to me they are flying in the face of the limitation on our authority so recently acknowledged by the Board in the *Hoover* decision in which it said: "We are not free, however, to measure concerted activity in terms of whether the conduct is wise or fair, or satisfies standards which we think desirable."

To the extent that it is possible to distill some limited test or standard for loss of protection from the majority deci-

sion it would appear to stand at least for this proposition: Where concerted activity is undertaken by employees "to alienate their employer's customers by impugning the technical quality of his product," it is unprotected. Yet in a footnote which apparently has reference to the previously recited facts that "the handbill did not bear the union's name," and its text "made no reference to the labor dispute," the majority say that they do not decide whether the disparagement of product here involved would have justified a discharge if "it had been uttered in the context of a conventional appeal for support of the union in the labor dispute." Surely the protection accorded to con-
1226 certed activity by the statute cannot be made to depend upon such technicalities as the format of handbills—the presence or absence at the end of some such magic phrase as "Support the XYZ union in its current labor dispute with this employer!" Furthermore, I am unable to see how the mere presence of a labor dispute and the failure of the handbill to make any specific reference to it or to the union could operate to make unlawful what I consider would be protected concerted activity even if there were no union and no labor dispute in the picture. If employees under the latter circumstance concertedly decided to enlighten the public on such a matter, perhaps feeling that the public would favorably remember them when they might need help in a labor dispute with their employer, there being nothing unlawful about such conduct, it would not lose its protection as concerted activity. I am not aware that the Board has ever held that the area of protection accorded "concerted activity" of employees is any less than that accorded union activity.

Even if the Board is to ignore the test of unlawfulness as the proper basis for determining loss of protection, I find it an anomaly that the majority could regard the kind of concerted activity here involved as "beyond the pale," while the kind of concerted activity involved in the *Hoover* and *Peter Cailler Kohler* cases is deemed to be within the pale and

entitled to protection. In the *Hoover* case the Board held in part that a union's consumer boycott conducted in conjunction with a strike, the objective of which was to compel recognition, was a protected activity even though recognition might have resulted in a *Mid-West Piping* violation of the Act by the employer. Beyond that the Board held that employees were engaged in a concerted activity protected from discharge in carrying on a consumer boycott of the employer's products for a different objective after abandonment of the strike and while continuing to work. Stated bluntly, the *Hoover* decision means that this Board sees nothing "beyond the pale" in employees insisting on the right to be paid to make products which they are simultaneously trying to make it impossible for their employer to sell. Yet how relatively inconsequential was any actual damage to the employer from the concerted activity
1227 involved in the instant case? These employees did no more than to point out to the public what in large measure it already knew—that the Employer's TV programs consisted largely of canned film of varying degrees of antiquity with no live local talent as in other cities; and to incite a demand for better programs and the equipment which would make them possible. Unlike the activity held protected in the *Hoover* case, this handbill did not and could not result in any present financial loss to the Respondent.[18] True, the handbill might be embarrassing to

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[18] As the majority opinion indicates, the Respondent only "apprehended" the remote contingency of an inability to increase its revenues by charging higher advertising rates in the future based upon the presence of a larger number of TV sets in the area, if the handbill should discourage people who did not then own TV sets from buying them.

I should make clear that in making this comparison with the *Hoover* case I do not mean to suggest that I believe that the question of economic loss to the employer is determinative of whether concerted activity is protected or unprotected. All strikes and many forms of concerted activity necessarily result in financial loss to an employer. Yet as Judge Hand states in the *Peter Cailler Kohler* decision, the fact that the activity is "highly prejudicial" to the employer and causes him to "incur the enmity of many in the community" and his customers "to refuse to deal with him," does not give the employer the right to discharge those "who lay such burdens upon him." I am suggesting, however, that if the Board approaches the issue of protection from the standpoint whether the activity is to be deemed "beyond the pale,"

the Respondent and might require it to explain its inability to present better programs or even provoke a decision to purchase equipment to televise some live local sporting events, etc. But is the right to engage in concerted activities conferred by the statute to be made so ephemeral as to be forfeited simply because the activities are embarrassing to the employer?

It should also be noted that the concerted activity held to be protected in the *Peter Cailler Kohler* case did not even occur in the course of a labor dispute between the employer and his employees as did the activity in the instant case. The employer there had acted contrary to the interests of certain dairy farmer producers (not employees) who were conducting a milk "strike," by purchasing and processing milk not for its own manufacturing operations, but for delivery to the metropolitan market. The
1228 Kohler employees gratuitously injected themselves into this picture in which their own interests were not affected, by passing and publishing a union resolution which lambasted their employer's actions. The resolution charged the employer with having "aided and abetted" the forces who were using "every vile and vicious means" to stop the dairy farmers in the current milk "strike"; it protested the employer's action and expressed the union's support of the dairy farmers. The court upheld the Board in finding such concerted activity to be protected from discharge even though undertaken in behalf of farmer producers and not for the immediate benefit of the union members who passed the resolution.[35] If,

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certainly the extent of the actual injury the employer suffers is a factor to be considered in weighing his right to extinguish his employees' right to engage in concerted activity; and the Board should not incongruously hold peaceful concerted activity which results in no substantial damage to the employer unprotected, as it is doing here, while holding seriously prejudicial activity of the type involved in the *Hoover* case to be protected.

[35] The theory on this aspect of the case was that the *Kohler Company* employees could give support to the farmers in the belief or hope that the farmers might reciprocate if at some time in the future a dispute arose between the *Kohler Company* and its employees.

as the Board and court held, employees who have no dispute with their own employer over wages, hours or working conditions, are entitled to be protected from discharge in lambasting their employer in this fashion in the context of the *Kohler* case, I can see no logical basis for concluding that the employees in the instant case are "beyond the pale" by reason of the temperate and truthful criticism of their employer made in a handbill in the course of a labor dispute in which they are seeking a concession in the form of an arbitration clause in a contract. To characterize this conduct as "hardly less 'indefensible' than acts of physical sabotage," as my majority colleagues do, is to draw a patently farfetched and unwarranted analogy.

I am greatly disturbed by the impact this decision of the Board will have in analogous situations. Suppose some employees in a defense plant manufacturing war material, knowing some to be defective (as has sometimes actually happened in the past) decide to write a letter to the defense procurement agency involved or to a newspaper, pointing out the existence of the defects. The employer discharges them for disparaging his product. Consistent with today's decision this Board would have to find that the concerted activity was not protected because the employees impugned the technical quality of the employer's product. A shrinking of the scope of the statutory protection afforded
1229 concerted activity to exclude the area excepted by today's decision—in effect muzzling employees who would speak out on matters of general public concern, whether they be the character of TV programs or defective war materials—in my view is not consistent either with the statute or with any salutary public policy.

Signed at Washington, D. C., June 26, 1951.

ABE MURDOCK, *Member*

NATIONAL LABOR RELATIONS BOARD

1230

APPENDIX A

NOTICE TO ALL EMPLOYEES PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL, LOCAL 1229 or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

WE WILL NOT discourage membership in INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL, LOCAL 1229, or any other labor organization of our employees, by discriminating in any manner with regard to their hire and tenure of employment, or any term or condition of employment.

WE WILL NOT in the future rate our transmitter technicians for purposes of their Federal Communications Commission license renewals with reference to their membership in, or activities on behalf of, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL, LOCAL 1229, or any other labor organization to which they may belong or by whom they may be represented.

WE WILL offer to Leonard Flowers immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed.

WE WILL make whole Leonard Flowers for any loss of pay suffered by him by reason of the discrimination practiced against him.

All our employees are free to become or remain members of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL, LOCAL 1229, or any other labor organization, or to refrain from so doing, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the amended Act. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

JEFFERSON STANDARD
BROADCASTING COMPANY
(Employer)

Dated..... By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

1231 IR-218

United States of America
Before The National Labor Relations Board
Division of Trial Examiners
Washington, D. C.

In the Matter of

JEFFERSON STANDARD BROADCASTING COMPANY

and

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. OF L., LOCAL 1229

Case No. 34-CA-170

Erratum

Through inadvertence a page was omitted from the Intermediate Report issued August 21, 1950, in the above matter. This error is hereby corrected by adding the attached page 11a to said Intermediate Report between pages 11 and 12 [inserts between court folios 1243 and 1244].

Through inadvertence the last word on line 39, page 18, [page 74, line 27, of this record] was omitted. The omission is hereby corrected by adding the word, "not" as the last word in the line, so that the sentence will read, "It is not so found."

Dated at Washington, D. C., this 30th day of August 1950.

/s/ ALBA B. MARTIN
Trial Examiner

1232 I find that Respondent, by discharging the 10 employees, unlawfully coerced and restrained its employees in the exercise of the right of self-organization and to engage in other concerted activity for purposes of collective bargaining and other mutual aid or protection, in violation of Section 8 (a) (1) of the Act, and also discrim-

inated against them in regard to their hire and tenure of employment, thereby discouraging membership in the Union, in violation of Section 8 (a) (3).

B. *Interference, restraint, and coercion*

In August, 1949, Respondent endorsed "unsatisfactory" on Hicks' license from the Federal Communications Commission, covering the period of his service from September 1944 until August 20, 1949. The enormity of this act from Hicks' point of view is indicated by the fact that had the FCC on the basis of this endorsement refused to renew Hicks' license, he could no longer serve as a transmitter technician which had been his assignment during most of his tenure with Respondent.[16] The General Counsel contends that by this act Respondent interfered with, restrained, and coerced Hicks in the exercise of the rights guaranteed in Section 7 of the Act. Two other possible explanations are offered by the record: Deficiencies in the performance of his technical duties; the relationship between Hicks and his immediate supervisor, Carey.

This "unsatisfactory" endorsement was made by Minor, who had been chief electrician at WBT for at least 10 years and connected with it for 18. During this period of time he had undoubtedly had occasion to make and see many endorsements upon licenses. He testified that this one was "the only unsatisfactory signature I have ever seen on a license."

1. Deficiencies in Hicks' performance of his technical duties

In the performance of his technical duties during the 2-year period just prior to the expiration of his 5-year license, Hicks committed certain errors in action and in judgment which were spread upon the record in considerable detail. For some of these he was cautioned, for some corrected, but

[16] Shortly before his discharge he was assigned to work in the control room.

it does not appear that for any of these he was warned. Other technicians, also, committed errors—which were adverted to in the record though not developed. According to Minor's "observation and search through the station records, the violations were much more numerous, as recorded by Mr. Hicks . . . in his log. . . . That's all I have to go by, is his statement, and of course, the others keep a record also." It thus appears that although Minor, according to his testimony, kept a running account in his head of how each technician was working, he was not aware that Hicks committed more violations than the others until he consulted the log. The only error shown to have been committed with any frequency by Hicks was committed with equal frequency by the other technicians; it is treated in footnote 17 below. [Page 63 of this record].

Shortly after August 11, 1949, Respondent wrote the Federal Communications Commission, pursuant to its request, in explanation of why it was endorsing Hicks' performance "unsatisfactory." This letter read as follows:

> We regret that Mr. Hicks' performance of his technical duties has been such that we cannot place a "satisfactory" endorsement upon his license. Such is nevertheless clearly the situation. Negligence and incompetence on his part has jeopardized our property and the efficiency of our station. The circumstances have frequently been such as to constitute violation on Mr. Hicks' part of the rules and regulations of your Commission.

1233 IR-218

United States of America
Before The National Labor Relations Board
Division of Trial Examiners
Washington, D. C.

In the Matter of

JEFFERSON STANDARD BROADCASTING COMPANY

and

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F. OF L., LOCAL 1229

Case No. 34-CA-170

Messrs. Miles J. McCormick and *John K. Pickens*, for the General Counsel

Messrs. Whiteford Blakeney and *F. P. Miller, Jr.*, of Charlotte, N. C., for the Respondent.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

Upon a charge filed September 13, 1949, by International Brotherhood of Electrical Workers, A. F. of L., Local 1229, herein called the Union, the General Counsel of the National Labor Relations Board, called herein respectively the General Counsel and the Board, by the Regional Director of the Fifth Region (Baltimore, Maryland), issued a complaint dated January 31, 1950, against Jefferson Standard Broadcasting Company, herein called Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (a) (3) and Section 2

(6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the charge and the complaint, together with notice of hearing, were duly served upon the parties.

With respect to the unfair labor practices, the complaint alleged in substance that Respondent violated Section 8 (a) (1) on and after July 20, 1949, by urging, persuading, and warning its employees by threats of reprisal or force or promise of benefit to refrain from assisting, becoming, or remaining members of the Union; and violated Section 8 (a) (1) and (3) by discharging 10 named individuals on or about September 3, 1949, and thereafter refusing to reinstate them.

Respondent's answer admitted certain and denied certain jurisdictional facts alleged in the complaint, admitted that the Union is a labor organization, and denied the alleged unfair labor practices.

Prior to the hearing Respondent filed a motion for bill of particulars which was granted in part and denied in part by Trial Examiner Stephen S. Bean who was designated to act thereon, and the particulars were furnished by the General Counsel as ordered.

1234 The hearing, originally set for February 14, 1950, was postponed at the request of counsel for Respondent until March 13, 1950. Pursuant to notice a hearing was held from March 13 to 17 at Charlotte, North Carolina, before Alba B. Martin, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and Respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the opening of the hearing Respondent made several motions: To dismiss the complaint as vague and general;

to dismiss two certain paragraphs of the complaint as unsupported by a charge; for a ruling that the record in this case might be reopened after the conclusion of the hearing to receive evidence which might be developed in a specified criminal trial involving one of the discharged persons, which trial had not yet been definitely set for hearing. All of the motions were denied. The General Counsel then moved for a ruling that if he should call as a witness the individual named in the criminal indictment, Respondent would not be permitted on cross-examination to question him concerning the indictment. This motion was denied.

At the conclusion of the General Counsel's case-in-chief, he moved to amend the complaint to add allegation of violation of Section 8 (a) (5) of the Act based upon an amended charge he thereupon served upon Respondent. The General Counsel stated his theory of the 8 (a) (5) allegation which indicated that his proof was already largely in the record. The motion was granted only to the extent of the theory stated and Respondent was advised that it could recall any of the General Counsel's witnesses for cross-examination concerning the new allegation and that if, at the conclusion of its case, it wished additional time to prepare its defense to the new allegation, at least 10 days would be granted. At the conclusion of its case Respondent amended its answer to deny the new allegation and waived any further hearing. The General Counsel's motion to conform the pleadings to the proof was granted. A brief was received from the General Counsel.

After the close of the hearing the General Counsel moved to reopen the record for the purpose of adducing further evidence concerning Respondent's alleged refusal to bargain since the hearing, which motion was granted over Respondent's objection. The reopened hearing was held in Charlotte, North Carolina, on July 10, 1950. The General Counsel and Respondent were represented by coun-

sel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. The Business of the Respondent

Jefferson Standard Broadcasting Company is a North Carolina corporation, having its principal office and place of business in Charlotte, North Carolina, where it operates a 50,000-watt radio station with the call letters WBT under license from the Federal Communications Commission. Respondent broadcasts programs for approximately 10 to 12 hours daily over AM and FM and television. Less than 50 percent of its programs originate in Charlotte. The network programs, piped in over a leased wire, generally originate in New York, California, or Illinois, and are generally sponsored by products sold Nation-wide. The local programs include recorded commercials sent to Respondent from points outside the State of North Carolina, which commercials consume approximately 5 to 6 percent of Respondent's daily broadcast time. Respondent's
1235 annual gross revenue is in excess of $100,000, of which less than 20 percent is derived from network broadcasts. Respondent receives and broadcasts news items from the Associated Press and the United Press.

Respondent conceded that it is engaged in commerce within the meaning of the Act.

II. The Organization Involved

International Brotherhood of Electrical Workers, A.F. of L., Local 1229, is a labor organization admitting to membership employees of Respondent.

III. The Unfair Labor Practices

A. *The discriminatory discharges*

1. Background

From 1945 when Respondent acquired Radio Station WBT from the Columbia Broadcasting System, until the last contract expired January 31, 1949, Respondent had contractual relations with the Union for its radio technicians. Negotiations towards another contract began in late December 1948 and consumed about 2 weeks of bargaining time during January 1949 and a few more days just before July 8, 1949. Meantime on a petition for certification filed in October 1948 the Board on April 8, 1949, directed an election which was conducted May 2, 1949. The Union won 12 votes out of 14 voting [1] and on May 9, 1949, the Regional Director issued his certification on behalf of the Board.

Shortly before the Union received 12 votes in the election the Respondent advertised for 12 radio technicians. Several times during the months of November and December 1948 and February 1949 Respondent placed an ad in Radio Broadcast Magazine for 12 radio broadcast technicians. This advertisement read as follows:

> Wanted—12 radio broadcast technicians with radio telephone first class licenses, to begin work within next 90 days. Pay better than average. Location southeast. Give references, whether presently employed, also last employer. Box 329, BROADCASTING.

In January 1949, while waiting for the beginning of a bargaining session, 2 members of the Union's bargaining committee, one an employee, asked Respondent's vice president and general manager, Mr. Crutchfield, if this advertisement had been placed by WBT. Crutchfield replied that it had, and that they "would be surprised at the amount of responses that" Respondent "was able to get from that ad."

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[1] 34-RC-106.

Crutchfield testified that a number of the clauses in the contract when WBT was owned by CBS were not suitable for the operations of Respondent, an independent; that while bargaining during the first few years after 1945 it attempted against resistance but with some success to get the clauses altered; that of particular concern it had inherited high engineering salaries, disproportionate to comparable functions throughout the entire South; and that each year during the negotiations for a new contract the Union had threatened to strike if its demands were not met. So as negotiations were about to begin for another contract in late 1948 Crutchfield authorized the placing of the ad so that "if the boys struck this time, we could not and we would not allow such a strike to shut down our business. So we were determined to have personnel available if and when the long threatened strike came about." For the
1236 purpose of keeping in touch with any applicants Respondent prepared and used form letters which pointed out, among other things, that its wage scale increased up to a maximum of $115 per week—the high rate which was giving it concern.

Having thus fortified itself Respondent took a strong initiative in the bargaining, demanded that the discharge clause in the next contract must be different from the one that had been in all the previous contracts between the Union and Respondent. The existing clause, which the Union sought to retain, provided that the Company should have the right to discharge a technician for *just* cause and that if the Union believed a discharge to be unjust it could take the issue to arbitration and the arbitration board had authority to "make an appropriate award to such technician for all time lost." The Respondent's suggested change was that it have the right to discharge a technician for any cause whatsoever, just or unjust, and that the arbitration board's authority to order reinstatement and back pay be limited to cases where the arbitration board finds that the acts or omissions assigned by the company for the discharge did

in fact occur; if it finds the acts or omissions did not occur it will have no authority to order reinstatement and back pay. During the negotiations Crutchfield admitted that the Company's proposed clause could be interpreted to give the Company authority to "fire a man for parting his hair on the wrong side" or "for wearing a red necktie rather than a blue necktie," but stated that it was absurd to think he would discharge employees for any such reason because he was responsible for his actions to a reputable group of stockholders and directors. It is clear that Respondent sought power to discharge that was absolute, and that the arbitration it offered in discharge cases was arbitration in name only but not in fact.

Regardless of whether Respondent intended to use arbitrarily the absolute power to discharge which it sought, it never receded from this demand. Other issues were discussed, some were resolved, and all but the discharge clause were resolvable.[2] The negotiations reached an impasse on July 8, 1949, as a result of the parties' inability to reach agreement on the discharge clause.

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[2] This conclusion is based upon a preponderance of the substantial evidence. Of interest in this connection is "a copy of a statement which briefly sets forth our position at the time the negotiations . . . were suspended," which Respondent sent to its employees on September 3, 1949. The statement read as follows:

> Commencing about the first of the year, we have had numerous lengthy conferences with the representatives of this union in an effort to arrive at contract terms which would be acceptable to them and us. In these negotiations we have agreed to many far-reaching demands on their part and are now offering them a contract containing most of the provisions which they have requested.
>
> But the union is also insisting upon our agreeing that an outside arbitrator shall have the power to determine whether we can or cannot discharge an employee even though we might find him *incompetent* or *unsatisfactory* to us. If we are going to be able to run our business we certainly think that we should have the right to decide who shall be our employees and whether we shall keep a person in our employment or not.
>
> * * * * * *
>
> There is no dispute about wages, hours, and wages, hours, (sic) and working conditions at WBT. These men start working for us at $70.50 per week and make up to $113.50 per week for a five-day week (eight hours a day) straight time, to say nothing of overtime pay and various other benefits which are available to them. (Emphasis added.)

1237 Beginning July 9, 1949, based upon a decision made by majority vote at a special meeting of the local the previous evening, the Union began picketing Respondent's business during working hours. From then until at least the original hearing two technicians at a time picketed in front of the building housing Respondent's offices and studios. The employees did not strike. They worked their regular shift for Respondent and picketed during off hours according to a schedule arranged among themselves. No company working time was lost as a result of the picketing. During the entire 12 months of picketing between the establishment of the picket line and the original hearing, both before the men were discharged September 3, 1949, and after, there was no violence on the picket line, no blocking of pedestrians on the sidewalk, and no loud, boisterous talking. No evidence on this subject was proffered at the reopened hearing.

During the weeks prior to their discharge the pickets carried placards and distributed handbills giving the Union's version of its dispute with management. The leaflets were distributed by members of other organizations also. All of these placards and handbills identified the Union as the party to the dispute, and some of them in addition used the words in large type, "Radio Broadcast Technicians" or "Radio Technicians." The placards referred to Respondent as "unfair"; stated "We are not on strike"; "WBT desires to discharge us for any reason they see fit. Further, they refuse to arbitrate unfairness of such action. Do you consider this fair? We don't either"; "—We do not desire to interrupt your favorite radio program or delay television in Charlotte due to our dispute with the management of Radio Station WBT"; "We are not on strike. We have offered to accept the same agreement as we had last year. WBT has refused this offer and will not arbitrate the question. We welcome your support in our fight for fairness at WBT." The handbills stated the technicians were "peacefully picketing the station in an effort to ac-

quaint the public with our dispute . . . the Company insisted that we insert a clause regarding discharges, 'in that they would have the right to discharge any technician, whether JUST or UNJUST, and we would be forced to accept their decision without recourse.'"

The pickets' activities thus far were deemed by Respondent's general manager to be protected; he so stated at the hearing; and I so find. There was no claim to the contrary. They would have been protected had the employees been on strike; they were no less protected because while picketing the employees also did their work. In any case by taking no action concerning the picketing and handbilling thus far, Respondent condoned and waived any picket line activities.[3]

Respondent made no retaliatory move and neither party took steps to renew the bargaining.

2. The discharges

On July 14, 1949, Respondent made its first broadcast in the television medium, thereby inaugurating a new operation. To do so had cost Respondent about one-half million dollars. It was Charlotte's only television station. A few weeks later appeared a handbill casting reflection upon the television operation, to which Respondent took great exception and which led directly to the discharge on September 3, 1949, of the 10 pickets Respondent held responsible[4] for distributing it. This handbill, hereafter referred to as the second-class city handbill, read as follows:

1238 IS CHARLOTTE A SECOND-CLASS CITY?

You might think so from the kind of Television programs being presented by the Jefferson Standard

[3] See *The Hoover Company*, 90 NLRB No. 201.

[4] The General Counsel claimed and Respondent disputed that 3 of the 10 pickets did not in fact distribute this handbill. In view of the conclusions and recommendations reached herein, it will be assumed that they as well as the others participated in the distribution.

Broadcasting Co. over WBTV. Have you seen one of their television programs lately? Did you know that all the programs presented over WBTV are on film and may be from one day to five years old. There are no local programs presented by WBTV. You cannot receive the local baseball games, football games or other local events because WBTV does not have the proper equipment to make these pickups. Cities like New York, Boston, Philadelphia, Washington receive such programs nightly. Why doesn't the Jefferson Standard Broadcasting Company purchase the needed equipment to bring you the same type of programs enjoyed by other leading American cities? Could it be that they consider Charlotte a second-class community and only entitled to the pictures now being presented to them?

WBT TECHNICIANS

This handbill, as all the previous handbills, was written by the business manager of Local 1229 representing the local, and an international representative representing the international union. After it was printed but before it was distributed, it, as all the previous handbills, was approved for distribution by the executive committee of the local. One member of the executive committee, Hingle, "didn't approve of that type of handbill" but he helped distribute it. The thoughts of the other six members of the seven-man executive committee do not appear in the record; Stroupe, a member, first saw it after it had already been distributed. There is no evidence whatsoever that the decision to distribute the handbill did not represent the genuine expression of the executive committee.

During the last 7 working days in August and the first 2 working days in September 1949,[5] 5,000 copies of the

[5] A stipulation of counsel as to the distribution dates is credited although somewhat at variance with the testimony of some witnesses. Counsel for Respondent and the General Counsel waived any right to attack the credibility of any witness because of his testimony contrary to the stipulated facts.

handbill were distributed. Seven of those then picketing comprised the executive committee. The handbills were distributed by pickets * on the picket line at the main square in Charlotte, a few blocks away, and some were placed on busses which stopped near the picket line. Some were distributed at other places in the downtown area of Charlotte; in a restaurant, and on the street between the picket line and the square by persons, not necessarily pickets, having a batch of them in their hands. Perkins, a member of the executive committee, while handing a copy to Respondent's promotion manager said, "Here, show this to 'Crutch' and tell him that there are four or five more coming stronger than this"; and while handing a copy to the promotion manager of Respondent's AM operation Perkins said in substance: ". . . if you think this is tough, wait until you see what we have coming up." Counsel stipulated that those discharged had agreed among themselves and planned at about the time the second-class city handbill was distributed to exert more pressure upon Respondent at the "same type and sort" as that handbill, and "substantially in the same manner." There was considerable discussion of the handbill among business men and some alarm among Respondent's management and television equipment distributors and dealers as to its possible economic effects upon their business. There was no evidence that any distributor or dealer communicated his con-
1239 cern to Respondent prior to the discharge of the employees, although several of them did afterwards. Since the price Respondent charged for television time depended upon the number of television receiving sets in the area, a drop in sales of receiving sets would be detrimental to the development of Respondent's new television operation. As it was Respondent's over-all operation, AM, FM, and television was losing money at the time the handbill appeared and it continued to operate in the red during the first 4 months of television operation.

* Several of whom worked in Respondent's television operation.

September 3, 1949, Respondent sent a 2-page discharge letter to each of the 10 men named in the complaint. Insofar as they state the cause for discharge the letters are identical. After stating that despite the placards and "literature" prior to the second-class city handbill, "we still continued to treat you exactly as before," the letter stated,

> Now, however, you have turned from trying to persuade the public that we are unfair *to you* and are trying to persuade the public that we give inferior service *to them*. While we are struggling to expand into and develop a new field, and incidentally losing large sums of money in the process, you are busy trying to turn customers and the public against us in every possible way, even handing out leaflets on the public streets advertising that our operations are "second-class", and endeavoring in various ways to hamper and totally destroy our business. Certainly we are not required by law or common sense to keep you in our employment and pay you a substantial salary while you thus do your best to tear down and bankrupt our business.
>
> You are hereby discharged from our employment . . .

While indulging in the harsh reprisal of discharge, Respondent utilized none of the media open to it to counteract the Union's propaganda with propaganda of its own. Although legally it could have, it did not prior to discharge place any advertisement in newspapers stating its contentions as to whether its television broadcasts were second-class. It got out no handbills on the subject. It made no statements over the air, although it was in the broadcasting business. Further, Respondent did not ask the Union or any of its officers or members to neutralize the effects of the handbill by additional propaganda or otherwise.

As to the cause for the discharge of the 10 men Crutchfield testified in replying to a question by the Trial Ex-

aminer that ". . . their discharge . . . was based solely on the second-rate city handbill and its effect on us and our clients and non-clients who were in the television business." Prior to that, on redirect examination, he testified in answer to a question as to when he first learned about a letter to the Federal Communications Commission, "Well, that was after I had made the decision that we must discharge these men. The letter came to my attention and it certainly bore out my previous decision to discharge them. The handbill and the surrounding circumstances, its ramifications . . . were the cause to discharge. The letter to the Commission was just a little more proof that I was right in my decision."

The letter to the Federal Communications Commission was written by Sterling L. Hicks, business manager of Local 1229. Under Hicks' signature appeared the following: "S. L. Hicks, Business Manager Local Union No. 1229, International Brotherhood of Electrical Workers." This letter, dated August 6, 1949, read as follows:

> The Citizens of Charlotte have been looking with anticipation for several months to the coming of Television in this area, however, it is here, BUT IN NAME ONLY.
>
> In talking to various dealers of Television Receivers, we find that they as well as the general public are very much disappointed in the type and quality of programs being broadcast by the local Television outlet, too, the dealers have stocked their showrooms with television receivers, but are unable to move them due to the fact that the general public is complaining about the program material now being presented.
>
> We feel that the local outlet is not utilizing the full facilities as granted in the license, we therefore respectfully request, unless they take advantage of situ-

ation, that the television channel be granted to someone who will.

On cross-examination, Crutchfield, in testimony he later contradicted, said that he discharged the men "because they, while in our employment, did something in distributing that second rate handbill and writing to the Commission asking them to revoke our license, that made us feel not only justified in firing them, but compelled to fire them, as any other company would do." To the Trial Examiner's questions, "Do I understand your testimony to be that you discharged these men solely because they distributed" the second-class city handbill? Crutchfield's reply was, "That plus the hair that broke the camel's back. Well, that was the main factor and then when the Commission letter showed up, why that just was more than we could take."

In view of the contradiction in Crutchfield's testimony it becomes necessary to resolve the question as to exactly why the men were discharged. It is found that they were discharged solely for distributing the second-class city handbill. This resolution is compelled by the following considerations in addition to Crutchfield's testimony: (a) The discharge letter refers only to the handbill and in no way refers to the letter to FCC; (b) although Crutchfield considered the executive committee of the local responsible for the letter to FCC he discharged not only the seven members of the executive committee but also three more and in the discharge letters gave the same reasons for the discharge of the three as for the seven; (c) all members of the local were not discharged but only some of them, even though the letter to FCC had been signed by the business manager of the local who was not a member of the local's executive committee—which Crutchfield would have known had he known the composition of the executive committee; (d) the discharge letter to Hicks made no mention of the letter to FCC even though Respondent knew Hicks signed it.

Although the second-class city handbill did not mention the Union and did not mention the existence of a labor dispute, it is clear that it grew out of the same labor dispute between Respondent and the Union as gave rise to the earlier placards and flyers which did mention the Union, the dispute over the discharge clause in the contract. On August 22, 1949, on the letterhead of the local written by Thompson, an international representative, and signed by Stroupe, president of the local, a letter was sent to Respondent's employees saying,

> *** the organization has plans to apply more pressure than has been used to date. We are forced to use stronger means due to the underhand methods the company is now employing.

The following day the Union picked up from the printer the first batch of the second-class city handbill. All of the handbills were written by Hicks and Thompson, printed by the Union, approved for distribution by the executive committee of the local, and distributed by Union pickets. All of the handbills including the one in question, were an integral part of the Union's efforts, including the picketing, to prevail upon Respondent to agree upon a discharge clause satisfactory to the Union, and thereby to achieve a contract. It is clear also from the testimony of Crutchfield and to other members of management that they understood this. The discharge letter assumed it was
1241 the same controversy. Indeed the "WBT TECHNICIANS" were engaged in no controversy with management at the time of the offensive handbill other than the controversy over the discharge clause in the contract. It is concluded, therefore, that the discharges for distributing the second-class city handbill were discharges of Union men for assisting the Union to win its dispute with Respondent.

Whether or not the discharges were connected with the dispute over the contract it is concluded that they were in

relation for the concerted activities being engaged in by the men passing out the second-class city handbill while picketing for the purposes of collective bargaining and other mutual aid and protection.

3. Inaccuracies in the handbill

This handbill contained several partially or wholly inaccurate statements and inferences,[7] but there was no evidence that the Union in writing it and distributing it had any intent to falsify or maliciously to injure Re-

[7] The handbill inferred that if Respondent purchased the appropriate equipment Respondent could telecast "the same type of programs enjoyed by other leading American cities." On what co-author Thompson based his information does not appear in the record, but co-author Hicks knew the cable had been in the ground for some time; he didn't know whether programs were then available to Respondent and did not know what television equipment was necessary to take programs off the coaxial cable. Stroupe, who was on the picket line the last 4 days the handbill was distributed, and whose information came from an employee of the telephone company, testified that the telephone company did not transmit television programs south of Richmond, Virginia, because it had no contracts for service south of Richmond, that in the absence of any applications for television service, the telephone company was using the cable for telephone circuits, that television service could have been available on application approximately 60 days after the cable was installed. The facts were, as credibly testified by Crutchfield and the district manager of the Southern Bell Telephone Company, that even if Respondent had purchased the appropriate equipment it could not have procured programs from the telephone company because the telephone company's terminal and booster equipment was not adequate for television transmission, that Respondent had tried to obtain television programs from the telephone company and had failed because the equipment required would not be allocated by the telephone company for the link south of Richmond, Virginia, until 1950. There was no evidence however that any of these correct facts were ever communicated to Hicks, Thompson, the executive committee of the local, or any member of the local.

The handbill read, "Did you know that all the programs presented over WBTV are on film and may be from one day to five years old." This information was almost, but not quite correct. The facts were that daily multiscope news programs consuming approximately 2 to 2½ hours, and a cartoon program, used no film. Some of the film used was less than a day old, the age being a matter of hours, possibly minutes. Very often the films were over a day old.

The handbill read: "There are no local programs presented by 'WBTV.' The facts were that the station was on the air approximately 9½ hours per day, that the multiscope news programs consuming approximately 2 to 2½ of these hours was locally produced, that 3½ hours were devoted to filmed programs, and that the rest of the time was used for 'test pattern.'"

1242 spondent.[8] The evidence indicates, rather, that those who testified concerning the truth of its statements and inferences believed them to be true at the time they were testifying and at all times before. Stroupe, president of the local, and Hicks, its business manager, appeared to me to be honest witnesses, and as they answered questions concerning the substance of the handbill they appeared to me to be stating what they honestly believed to be the facts. There was a complete absence of any evidence that Hicks and Thompson, who wrote it, or any members of the executive committee who authorized its distribution, or any one who distributed it, did not believe it to be completely truthful.

4. Concluding findings

The right of working men to engage in concerted activities by picketing has long been recognized. This right is not diminished by the mere fact that they continue to perform their work during hours they do not picket.[9]

The right of employees to issue propaganda is likewise beyond question. The Second Court of Appeals, by Judge Learned Hand, has held:

> *** so long as the "activity is not unlawful, we can see no justification for making it the occasion for a discharge; a union may subsidize propaganda, distribute broadsides, *** and any other way further its cause

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[8] Cf. *Atlantic Towing Company*, 75 NLRB 1169; *Eastman Cotton Mills*, 99 NLRB No. 3.

During the period the leaflet was being distributed Hicks told his barber that "before we are through, we will break WBT." This does not indicate malice in the legal sense. "In a legal sense malice is never understood to denote general malevolence or unkindness of heart, or enmity towards a particular individual, but it signifies rather the intent from which flows any unlawful and injurious act committed without legal justification" Bonvier's Law Dictionary, Rawle's Third Edition, p. 2067. In any case there was no showing of ill-feeling against the Respondent on the part of any other employee at this time, and no showing of any such animus in Hicks at this time before his discharge as may have motivated an offense in January, 1950, for which he was later convicted. See V. "The remedy," *infra*.

[9] See Intermediate Report, *The Hoover Company*, Case No. 8-CA-109 issued August 3, 1949.

> ***. Such activities may be highly prejudicial to its employer;[10] *** but the statute forbids him by a discharge to rid himself of those who lay such burdens upon him. *Congress has weighed the conflict of his interest with theirs, and has pro tanto shorn him of his powers.* (Emphasis supplied.)[11]

The Board has held that:

> *** truth is not always apparent, and men are influenced in their conduct by rumors, by inferences from known facts, and even by mere suspicions which may ultimately prove to be unfounded but which the exigencies of the situation do not permit of verification; it would, therefore, be decidedly unrealistic to hold that the organizational and concerted activities
> 1243 envisaged by the Act exclude the utterance by employees of honestly believed statements of fact or opinion, which, in some cases, may actually be unfounded in fact.*** [12]

In considering objections to elections where unions have issued allegedly false and misleading accusations against employers, the Board customarily refuses to censor such propaganda and refers to the opposing parties the duty of correcting inaccurate or untruthful statements by any of them.[13] Here, it should be noted, Respondent had ample opportunity to counteract any allegedly derogatory or false statements contained in the second-hand city handbill, of which it did not avail itself during the week it was preparing for the discharge of the 10 employees and for some time thereafter.

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[10] Respondent proved there was an unexpected drop in sales of television receiving equipment during the month following distribution of the second-class city handbill.

[11] *N. L. R. B.* v. *Peter Cailler Kohler Swiss Chocolates Co.*, 130 F. 2d 503 (C. A. 2).

[12] *Atlantic Towing Company*, 75 NLRB 1169, 1172.

[13] *Carollton Furniture Manufacturing Company*, 75 NLRB 710; *N. P. Nelson Iron Works, Inc.*, 78 NLRB 1270.

Respondent was not bound to remain mute in the face of inaccuracies or misstatements. He could have, within limits fixed by the Act, openly criticized the second-hand city handbill in an effort to counteract its statements and effect.[14] Respondent could have, under section 8 (c) of the Act, expressed or disseminated any views, argument, or opinion, so long as it uttered no threat of reprisal or force or promise of benefit.

By the same token the Union and the employees in the offensive handbill uttered no threat of reprisal or force or promise of benefit, and their conduct was therefore well within the ambit of statutory protection.

In a case involving the layoff of an employee for good faith, inaccuracies concerning the company's wage rates and his failure to keep his promise to correct them, the Seventh Circuit Court of Appeals said, in holding the employee's activity protected by the Act:

> . . . Courts have recognized that a distinction is to be drawn between cases where employees engaged in concerted activities exceed the bounds of lawful conduct in "a moment of animal exuberance" . . . or in a manner not activated by improper motives, and those flagrant cases in which the misconduct is so violent or of such serious character as to render the employee unfit for further service, . . ., and that it is only in the latter type of cases that the courts find that the protection of the right of employees to full freedom in self-organizational activities should be subordinated to the vindication of the interests of society as a whole.[15]

Here it is found that the Union's conduct in distributing the second-class city handbill falls into the former rather than the latter category, and that it was not so extreme as to furnish justification for the discharge of the men.

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[14] *Agar Packing & Provision Corporation*, 58 NLRB 738, 745.

[15] *N. L. R. B. v. Illinois Tool Works*, 153 F. 2d 811, enforcing 61 NLRB 1129.

Involved here is the weighing of the conflicts between Respondent's interest in "a truthful representation of facts" and the employees' interest in publication of union literature free from employer interference, both interests being essential elements in a balanced society. Under all the circumstances in the case I find that the employees' interest must prevail. Respondent's resentment against the employees for distributing the objectionable handbill may not supersede the Congressionally declared public interest in preserving to employees full freedom of speech on organizational matters, unfettered by fear of employer reprisal.

1244 For example:

On Wednesday, April 13th, 1949, Mr. Hicks, while the only technician on duty at our FM transmitter and while *in charge there,* failed to take steps to repair or to have repaired a tower light which was not burning and failed to report to the Company that such light was not burning so as to enable the Company to repair the same. This situation continued until Friday, April 15th, 1949, Mr. Hicks being meantime the only person in a position to know of the light's being out. On April 15th for the first time, the Company otherwise discovered that the light was out and effected repair of the same.

On the night of May 25th, 1949, Mr. Hicks, while again the only technician on duty at the FM transmitter and *in charge thereof,* failed to report in proper time to the CAA that a tower light was not burning.

On November 4th, 1948, while the only technician on duty at our AM transmitter and *in charge there,* Mr. Hicks failed to observe until he was notified over a telephone by an outside radio listener that emissions were being radiated outside the station's authorized band, which emissions would cause interference to the communications of other stations.

On August 11th, 1947, while Mr. Hicks was the only technician on duty at our WBT-AM transmitter and was *in charge the e*, he operated the transmitter at no more than 60 percent modulation whereas at least 85 percent modulation should have been maintained.

Throughout the period of the license in question and while Mr. Hicks was working at our AM transmitter, he, on 31 separate occasions, the dates of which we will be glad to furnish if you desire them, failed to turn on the tower lights on or before the times required by the rules and regulations of your Commission and the CAA."[17]

1245 Some of the rules and regulations of your Commission violated by Mr. Hicks during the period of the license in question are as follows: (listing eleven sections) [underscoring added].

Notwithstanding the Respondent's letter,[18] the FCC is-

[17] The rules and regulations of the Federal Communications Commission provided that tower lights should be turned on 1 hour before sunset, a provision honored by its breach at WBT. The undenied testimony of Hicks and Hingle, both credible witnesses, and both transmitter technicians at the AM station for about 10 years, was that they and the other technicians customarily turned on the tower lights according to the amount of outside light there was, turning them on earlier on dark days and later on bright days. They did not in practice adhere to the 1-hour rule. This had been their practice not only while Respondent owned WBT but also before when it was owned by the Columbia Broadcasting System. Hingle testified that neither Minor nor any other official of Respondent ever spoke to him about the hours he switched on the tower lights. He testified further that on the log kept under FCC rules he always recorded the exact time he turned on the lights, and that no FCC inspector had ever spoken to him "or to anyone else that I know of" concerning the timing. George B. Patterson, Jr., testified without contradiction that the FCC makes regular inspections at least every 6 months and checks back at least 30 days. There was no evidence that the FCC or any FCC investigator ever suggested to or charged Respondent with violating FCC rules through the actions of Hicks. Nevertheless Carey and Minor, Hicks' supervisor and the chief engineer, criticized Hicks for his timing in switching on the tower lights. It thus appears that Hicks, of all the technicians who followed the same practice, was singled out for criticism to his face and to the FCC.

[18] This letter sets forth most, if not all but two, of the technical errors committed by Hicks. Additional ones were the use of an abrasive on delicate silver-plated equipment, which Respondent considered an error of judgment on his part; and not replenishing an empty supply of bottle gas when, according to Hicks, he did not know there was a full bottle available.

sued a new license to Hicks. In February 1950, pursuant to Hicks' request, the FCC's secretary quoted the above charges from Respondent's letter, and added, in a letter to Hicks:

> In the above connection you are advised that your license was renewed, notwithstanding these charges, in view of your overall past service record.[19] This does not mean that the Commission condones violations of the character alleged, or that it *customarily without inquiry or hearing* renews radio operator licenses containing unsatisfactory endorsements. The action in your case should not be construed to mean that the Commission has found these charges to be either true or untrue. (Underscoring added.)

It is concluded from the above, and particularly from the underscored words, that the FCC renewed Hicks' license without a hearing and even without an investigation, contrary to its custom and despite Respondent's charges.

At the end of July or early August 1949, George B. Patterson, Jr., a witness called by the General Counsel, heard the rumor that Minor was going to endorse Hicks' license "unsatisfactory" for reasons other than Hicks' performance of his technical duties. Soon thereafter Patterson questioned Minor about the rumor. Patterson testified that he told Minor he understood from some of the other technicians that Hicks was a competent engineer, and Minor agreed that Hicks was. Patterson then said that he understood that a Federal license could not be endorsed "un-

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[19] The over-all service recorded referred to was at least 10 years of satisfactory ratings from several employers prior to the 5-year period in question, including the satisfactory rating given by Minor as chief engineer for the 5-year period from November 1939 to September 1944, when WBT was owned by the Columbia Broadcasting System. In all, Hicks had been licensed as a first-class radio telephone technician for 19 years, and had never before received an "unsatisfactory" rating.

satisfactory" for reasons other than technical reasons.[20] Minor replied that he was wrong, that a license could be endorsed for other than technical grounds, and that he was intending to endorse Hicks' license "unsatisfactory" for reasons other than his technical performance. Minor denied this conversation and testified that his endorsement was based solely on Hicks' performance of his technical duties. Patterson impressed me as a particularly honest, credible witness, whereas Minor was a confused, self-contradictory, evasive, unresponsive witness, and on the whole not a credible one. Further the testimony shows that Patterson was genuinely disturbed over the rumor he heard during the period of the picketing and that he initiated the conversation with Minor in order to get his mind straight on
1246 the subject, testimony leading strongly to the conclusion that such a conversation took place—which Minor denied. Under all the circumstances Patterson's testimony in this respect is credited in full. It is found that Minor made the statement that he intended to endorse Hicks' license "unsatisfactory" for reasons other than the technical performance of his duties.

Crutchfield testified that although he considered Hicks incompetent at the time he was given the "unsatisfactory" rating, he did not consider discharging him, for fear the Union would file a charge with the Board. For the 9 months just prior to the rating Hicks had been in charge of Respondent's FM transmission station during his shift, an assignment scarcely in keeping with incompetency. It is more in keeping with Minor's statement to Patterson, which is credited, that Hicks was a competent engineer. If, as suggested in the letter to the FCC, Respondent's property had been jeopardized by Hicks to a dangerous extent it is

[20] The FCC's rules provided that station licensees shall endorse the licenses of employees, showing among other things the "quality of performance of duty." In a letter to Respondent dated August 11, 1949, the FCC's secretary stated, "The phrase 'quality of performance of duty' refers only to the performance of technical duties and does not encompass other aspects of an operator's relationship with his employer."

doubtful that Respondent would have kept itself in such ignorance of the law as to have been restrained from discharging him for incompetence.

2. Relationship between Hicks and Carey

A running conflict existed between Hicks and Carey which existed at least from 1945 on. The subject arose for discussion between Respondent and the Union several times during the succeeding years. There was no showing of anything new in the relationship in late 1948 and 1949.

In 1947 the problem came to the fore in an undisclosed way. During the summer of 1948 Hicks wrote Carey a letter on behalf of the Union claiming Respondent was violating its contract with the Union in two respects, one of which was that Carey the supervisor was doing some technical work which "belonged" to the employees, contrary to the contract. Carey did not answer. Hicks then wrote Minor and received a reply acknowledging receipt. He then wrote Crutchfield and discussed the matter with him. Crutchfield said he would like to take the matter up with an international representative. Finally, in Crutchfield's absence Thompson of the international and Hicks of the local met with Blakeney, Respondent's attorney, Minor, and Carey. During the discussion of Carey's doing technical work Minor told Carey that "if he would discontinue his union antagonism . . . he could get along a lot better with the union." On the advice of the international representative the local dropped the grievance.

Both Minor and Crutchfield referred to discussions of the relationship between Hicks and Carey during the 1948-49 negotiations leading to the impasse and the discharges. Since Carey did not participate in the bargaining negotiations, the references were not to any words or action by him in the bargaining meetings themselves. Minor testified, "all through the negotiations, various phases of the dissatisfaction between them has popped up. It has been very

annoying and regardless, it is just a difficult problem." Crutchfield referred to efforts to adjust the matter "during the negotiation when we were trying so hard to reach an agreement." In a meeting of the technicians, Minor and other supervisors (but not Carey) held during the negotiations, Crutchfield suggested to Hicks that at Crutchfield's expense Hicks take Carey out to dinner so that on a social rather than a business level they could discuss their problems. Hicks demurred, suggested that Carey be asked to invite Hicks over to Carey's house for dinner. Two weeks later when Crutchfield asked if Hicks had had Carey out to dinner Hicks replied that he had not.

When, according to Crutchfield, "our contract negotiations looked hopeless" Hicks and Thompson, international representatives, came to Crutchfield, and Thompson said, "I think we can solve this whole problem if we can get an understanding between Mr. Hicks and Mr. Carey . . .

I think that is the crux of it. I don't think we have 1247 a labor problem. I think it is a personal problem."

The next day Hicks and Thompson returned and suggested that Supervisor Carey be transferred from the transmitter to the control room and that Supervisor Callahan of the control room go to the transmitter—Hicks then working at the transmitter. Crutchfield discussed this suggestion with management and later told Hicks it was unfeasible because Carey and Callahan were more qualified where they were then interchanged. Asked for further ideas, Hicks suggested getting rid of Carey; which Crutchfield refused because he "had a great deal of respect for Mr. Carey personally and his ability . . . " Instead of discharging Carey, Crutchfield transferred Hicks from the AM transmitter, where he had worked for many years, to the FM transmitter, in order to separate the two men. At the FM transmitter Hicks was free of immediate supervision, in fact was in charge, and was answerable directly to Minor whose office was 22 miles away. The record indicates that this change was made in November 1948, some

8 or 9 months before Hicks was given the "unsatisfactory" endorsement; and insofar as the record discloses there was no further discussion of the Hicks-Carey problem.

Although Crutchfield felt that Carey had his faults and "never . . . blamed everything on Mr. Hicks," and although Minor did not think that Carey was without fault in the matter, Minor endorsed Carey's license "satisfactory" in about March 1950 presumably covering his performance over a 5-year period.

3. Concluding findings

The giving of an "unsatisfactory" endorsement to Hicks, thereby casting a shadow across his future in his chosen trade, was closely connected with Respondent's other actions towards the Union since the fall of 1948.

For some 12 or 13 years prior to the fall of 1948 WBT under 2 owners had discharged no radio technicians. This was due no doubt in part, at least, to the existence of a strong local union, which for some years prior to the 1947 amendments of the Wagner Act had succeeded in maintaining a closed-shop contract on the property, and whose strength since the abolition of the closed shop had diminished only to the extent of 4 out of 16 by May 2, 1949. Through this strength the Union had been able to maintain contractual clauses laden with the employees' interest, including high wages and arbitration which were particularly obnoxious to Respondent. Girding its loins for a showdown bargaining battle by the placing of the advertisement for new employees in the fall of 1948 Respondent undertook to win concessions from the Union at whatever cost, to lower wages and to get itself into a position to discharge "incompetent" or "unsatisfactory" employees for any reason it chose without concern for a possible veto by an arbitrator. Crutchfield suggested no other technician than Hicks, whom he regarded as incompetent, and none other was rated unsatisfactory.

The Respondent's strong offensive to wrest job-power from the employees' representatives met with their anticipated resistance and in the forefront of this resistance was Hicks, business agent for the local, the man through whom Respondent had been doing business with the Union ever since it took over the station. Hicks signed the petition for certification for the Union in October 1948, participated in most of the bargaining sessions, and was one of two regular employee members of the Union's bargaining committee. He was later a regular picket on the picket line and in fact in charge of the picket line. Several of Respondent's management testified that they saw him as well as others on the picket line and passing out leaflets. In addition it was Hicks who alone among the employees took two grievances as far as he could with the Respondent in the summer of 1948, it was Hicks who alone among the employees wrote the handbills passed out by the pickets and had them printed. Crutchfield did not deny or question the conclusion when Wimberly, assistant to the president of the
1248 international union, told him several weeks after the "unsatisfactory" endorsement, that Hicks seemed to be "a very competent union man." The entire record in the case impels the conclusion that Hicks was the strongest union man among Respondent's technicians and the spearhead of the resistance against Respondent's bargaining offensive; and that Respondent knew it.

Respondent not only knew it but because he, more than any other technician, was blocking it from its bargaining goal, it wished to get rid of him. In the same interview with Wimberly, which took place in Washington, D. C., August 26, 1949, where Crutchfield had gone at Wimberly's request to try to settle the dispute, Crutchfield volunteered that if the Union would hire Hicks and was unable to pay him as much as he was receiving from Respondent, Crutchfield would pay the difference. The record does not show whether the difference was to come out of Crutchfield's own pocket or out of Respondent's or for how long the arrange-

ment would continue. That Crutchfield did not limit the offer to a stated period of time when he made it is added indication of Respondent's wish to be rid of him. Presumably it was cheaper to make a continuous contribution to Hicks' union salary, if the international hired him, than to continue paying the wages his continued employment by Respondent helped to maintain.

Not only in the above manner, but in several additional respects, Hicks was singled out by Respondent for special treatment it did not extend to the other technicians. To his face and to the Federal Communications Commission Hicks alone was criticized for his timing in switching on the tower lights, even though his practice was identical with the others'. Although Crutchfield and Minor both held Carey somewhat at fault in the Hicks-Carey relationship, they singled out Hicks for an "unsatisfactory" endorsement and a few months later gave Carey a "satisfactory."

In another respect Hicks was singled out. Minor testified that he kept in his head a general idea of the calibre of work being performed by the various men under him from information sent in by them. Yet when he was considering giving Hicks an "unsatisfactory" he made a special check of Hicks' entries in the log. Minor evaded answer to a question as to whether he customarily checked the log each time a technician requested a license endorsement.

The record does not fully develop either the roots or the exact nature of the conflict between Carey and Hicks, but it does indicate beyond cavil that the conflict was part and parcel of the greater conflict between the Union and Respondent. Thus in the summer of 1948 the issue was whether Carey by his actions was violating the contract between the Union and Respondent, and, as testified by Hicks, Minor told Carey "if he would discontinue his union antagonism . . . he could get along a lot better with the union." Both Minor and Carey testified and neither denied Hicks' testimony above. On the basis of their silence as well as

Hicks' testimony it is concluded that Carey was antagonistic towards the Union and particularly towards Hicks, its strongest member. There being no proof to the contrary it is concluded that this antagonism continued after March 16, 1949, the date 6 months prior to the filing and service upon Respondent of the original charge.

Carey was supervisor of the AM transmitter, and as such had supervisory authority over a number of the technicians. A man in such a position who bears antagonism towards the union representing the employees under him can be the source of constant friction. It is likely that Thompson had this in mind when he suggested to Crutchfield that the whole problem between the Union and Respondent could be solved if an understanding could be reached between Carey and Hicks. In any case it is clear that unless the Carey-Hicks controversy were closely integrated with the greater controversy between Respondent and Union, its removal from the scene could not *begin* to effectuate a solution between Respondent and Union, not to mention *consummate* a solution.

1249 The conclusion that the Carey-Hicks controversy was closely integrated with the greater controversy between Respondent and Union is further borne out by the absence from the record of any proof that the Carey-Hicks controversy arose over anything other than their respective attitudes towards the Union. The record shows no elements leading to a conclusion of conflict between the two men because of personality traits. Further, during 1945-1946 Carey's supervisory authority over Hicks' "individual" was removed although retained over his "technical operations," showing that at that time, at least, the conflict had no reference to their work. There was no showing that the conflict changed in this respect in later years. There was no proof that their supervisor-employee relationship concerning the work varied from the norm of that relationship.

Minor testified that for a period of several years before Hicks' license came up for renewal he was generally aware

that there were faults in Hicks' performance. Although he discussed some of these faults with him, he did not suggest to Hicks the possibility that when his license came up for renewal Minor might give him an "unsatisfactory" rating because of these faults, because "that is a threat of reprisal." Nothing in the Act would have barred Minor from making such a suggestion to Hicks in an effort to improve his performance. The Act would have barred such a suggestion only if it were an effort to restrain his union activities. The fact that Minor thought in terms of "threat of reprisal" indicates that Minor thought of Hicks primarily in terms of Hicks' union activities, and that while weighing in his own mind Hicks' performance of duty, he was unable to weed out of it his thoughts on Hicks' union activities.

It is concluded, in view of the above, that when Minor expressed to Patterson his intent to give Hicks an "unsatisfactory" endorsement, for reasons other than Hicks' performance of duties, he was expressing his true intent and that he carried out that intent. It is found that Hicks was not rated for his performance of duties. In view of this finding, no conclusion is reached as to whether, had he been rated for his performance of duties, the nature of the offenses was such as to justify the rating. Respondent had failed in its bargaining goal of achieving the removal of "unsatisfactories" and "incompetents" without possible veto by arbitration, and it turned to achieving the same goal by other means. The giving of the "unsatisfactory" endorsement to Hicks was clearly calculated to discourage any further concerted activity of the employees toward obtaining an arbitration clause suitable to them. By such conduct Respondent coerced and restrained its employees in the exercise of the right of self-organization and to engage in other concerted activity for purposes of collective bargaining and other mutual aid or protection, in violation of Section 8 (a) (1) of the Act.

C. *The refusal to bargain*

1. The appropriate unit and the Union's representation of a majority therein

The complaint as amended at the hearing alleged that all technical employees employed at the Respondent's main control room, 608 Wilder Building, Charlotte, North Carolina, at the main transmitter, Nation's Ford Road, Charlotte, North Carolina, at the FM transmitter (RAMLO Station), Gastonia, North Carolina, and at the satellite transmitter, Shelby, North Carolina, but excluding the chief engineer and all supervisors, as defined in the Act, constitute an appropriate unit for the purposes of collective bargaining within the meaning of the Act. This allegation corresponded with the Board's appropriate unit finding in its Decision and Direction of Election of April 8, 1949. No evidence concerning this subject was introduced by either party at either the original or reopened hearing in the current case. In view of the Board's earlier finding, the fact that the unit as alleged appears to be an appropriate one, and the absence of any evidence to the
1250 contrary, I find that the unit as alleged and set forth above constitutes a unit appropriate for the purposes of collective bargaining within the meaning of the Act.

The Union having been certified as the bargaining agent by the Board on May 9, 1949, its majority is presumed to continue for a reasonable period of time, normally at least a year. In addition, the testimony is undisputed that as of just before the discharges of September 3, 1949, there were 22 technicians in the appropriate unit of whom 15 were members of the Union. Respondent's discharge of 10 Union members left 5 in its employ. The Union expelled these remaining 5 from membership in January 1950, for violating the Union's constitution by crossing the picket line. It is undisputed that none of Respondent's employees in the appropriate unit are presently members of the Union.

It is undisputed that prior to Respondent's unlawful discharge of 10 union members the Union represented a majority in the appropriate unit. This majority status must be presumed, at law, to have continued after the illegal discharges, for the Respondent's unfair labor practices cannot operate to change the bargaining representative selected by the untrammeled will of the majority.[11] It is therefore found that the Union was on and after May 9, 1949, and on and after September 4, 1949, and that it now is the duly designated representative of the employees in the appropriate unit.

2. The refusal

The General Counsel's position is, in effect, that Respondent refused to bargain within the meaning of the Act at three different times: (a) At the time of the discharge of the 10 men on September 3 and by virtue of that act, (b) on September 6, 1949, in its reply to the Union's telegram of that date, and (c) during and after the close of the original hearing.

(a) The theory under which the General Counsel was permitted to amend the complaint by adding an 8 (a) (5) allegation just before resting at the original hearing was that under all the circumstances of this case and assuming good faith bargaining up to the impasse, the discharge of the 10 employees from the appropriate unit during the certification year after the impasse had been reached was *per se* a refusal to bargain. It is [not] so found. Respondent was under no duty to offer to bargain with the Union concerning discharges it was contemplating, in the absence of a contractual clause so providing. There being no evidence that Respondent sought to undermine the authority of the Union except as that could be accomplished through the bargaining process, and Respondent having bargained in good

[11] *Medo Photo Supply Corporation*, 321 U. S. 678, 687; *Tishomingo County Electric Power Association*, 74 NLRB 864; *Inter-City Advertising Company of Greensboro, N. C., Inc.*, 89 NLRB No. 127.

faith, I am not convinced that the discharge of the employees indicated any contrary intent for past or future bargaining. The discharges were in no way connected with the bargaining which preceded them and were for a reason completely independent of that bargaining, so that it may not be concluded that they cast an aura of bad faith upon that previous bargaining. Nor can it be concluded on this record that the discharge of the employees was, *per se*, conclusive evidence of an intent to refuse to bargain with the Union in the future.

(b) In his brief the General Counsel urges as an additional ground for a refusal to bargain finding that Respondent "flatly refused to bargain with the certified bargaining representative during the certification year concerning the discharge of the 10 men named in the complaint when requested to do so by the Union's telegram of September 6, 3 days after the discharges." No such finding
1251 is made for 2 reasons. Firstly, such a theory was not included in the case in the ruling permitting the 8 (a) (5) amendment to be made; secondly, the Union's telegram of September 6 did not contain an unqualified request to bargain concerning these discharges. This telegram, from John A. Thompson, international representative, I.B.E.W., to Crutchfield, read as follows:

> As the representative of I.B. of E.W., local union, No. 1229, Charlotte, North Carolina, in the dispute with radio station WBT regarding terms of a collective bargaining agreement to cover technicians and engineers, over which you have, in the opinion of the union, unlawfully discharged ten Charlotte citizens from their jobs I propose that instead of the union filing unfair labor practices charges against the Jefferson Standard Broadcasting Company with the National Labor Relations Board of Washington, D. C., that the following steps be taken to resolve the matter: (1) all technicians discharged to be returned to their former position immediately without discrimination or prejudice. (2)

question of whether or not the discharges are warranted be submitted to an impartial arbitrator designated by Governor Kerr Scott of North Carolina. The union agrees to accept as final the decision of the impartial arbitrator. (3) upon settlement of the discharge questions, the parties shall enter into collective bargaining conferences, in good faith, to reach an understanding on all points in dispute. In the meanwhile all picketing of the studios of WBT by the union will be discontinued.

The request to bargain in this telegram relates not to the cause or justice of the discharges—which is to be determined by the arbitrator—but to the other points in dispute. Since the discharge question is to be settled first under the proposal and collective bargaining is not to begin until it is settled, there would not be any discharge point in dispute when the bargaining conferences began.

(c) Twice in March and again in May, 1950 the Union sought to reopen bargaining negotiations. Respondent asked for delay in March until Crutchfield returned from a recuperating vacation following a major operation. There was no proof that during this period Walker, who was in charge in Crutchfield's absence, or Blakeney, Respondent's attorney who had represented Respondent in the negotiations prior to the July 8, 1949, impasse and had represented himself to the union negotiators as being present as a negotiator, were ill, incapacitated, or unauthorized to set a date, time, and place for further bargaining meetings, which was all the Union had requested. Both Blakeney and Walker knew of the Union's request. Nor was any evidence offered as to any physical or other incapacity which prevented Crutchfield from considering the Union's request immediately after his return to his office on April 10 and from thereupon informing the Union of a date, time, and place for a meeting. Henry F. Adair, international representative of the Union, testified that on March 13 he requested

Crutchfield to set a date, time, and place and requested an answer "that afternoon or the next morning at the latest"; that he did not receive the requested answer; that a week later he repeated his request for a date, time, and place and Crutchfield replied that he would "talk with Mr. Blakeney and *let me know;* at that time he asked what date would be satisfactory with us for a conference, and I told him at that time that any date that was satisfactory with him would be satisfactory to us." (Italics added.) Crutchfield's version of the first March conversation with Adair was that Crutchfield told him that this was his first day out of his house after his operation, that he would have to think about the Union's request a little, and that "as soon as this hearing was over I suggested he get in touch with us again and we would discuss it further." The hearing referred to was the original in this case. Crutchfield testified that in the second conversation in March he told Adair that on doctor's orders he was going to Florida for a few weeks, and
1252 "if he wanted to get in touch with us about it later we would be glad to discuss the matter with him." Crutchfield testified further that he didn't think Adair's request was serious, that he thought "he was trying to cook up another charge to put on top of the other one, that is all . . ."

After receiving a written request from the Union dated May 10, 1950, to set a date, time, and place to resume negotiations, Crutchfield answered on May 13, 1950. In this 2½ page letter he reviewed from his point of view the Union's efforts to arrange a meeting during the March-to-May period, and concluded:

> However all this may be, it is clear that you desire your Company to engage in bargaining with your Union at the present time. I am now back at work, have fully resumed my duties, and we have, therefore, now proceeded to give thorough consideration to the question of entering into bargaining with your Union at this time.

> In view of the fact that we bargained fully and in good faith with your Union for several months in an effort to arrive at a contract but without success and in view of the fact that since then events have occurred and information has been brought to our attention from which it seems likely that your Union does not now represent a majority of our technical employees, we respectfully request you to furnish us with such evidence or proof as you may be able to furnish that you do now represent a majority of these employees.

The Union did not reply to the above letter and made no further effort to arrange a meeting with Respondent.

At the reopened hearing Crutchfield twice replied in answer to questions by the General Counsel that Respondent will not now recognize the Union without questioning its majority.

It is well settled that where, as here, a Union's loss of majority has been brought about by Respondent's unfair labor practices, the Union's majority status is not available as a defense to the charge that Respondent has violated Section 8 (a) (5) of the Act.[11] Since Respondent's act of discharging the 10 employees was the very act, found above to have been an unfair labor practice, which caused the Union's loss of majority status, Respondent could not later question that majority status as a condition to further bargaining.

It does not appear necessary to resolve the conflict as to whether at the second conference Crutchfield told Adair he would talk with Blakeney and *let the Union know* what Respondent would do about his request, or whether Crutchfield told him he was going to Florida and the Union could get in touch with him later if it wanted to. Respondent does

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[11] *Medo Photo Supply Corporation*, 321 U. S. 678; *Bradford Dyeing Association*, 310 U. S. 318; *Allen-Morrison Sign Co., Inc.*, 79 NLRB 903; *The Toledo Desk & Fixture Co.*, 75 NLRB 744; *Karp Metal Products Co., Inc.*, 51 NLRB 621,

not question that twice in March 1950, the Union requested it to set a date, time, and place to resume negotiations. It is held that a third such request was not needed, and that the Union's two requests placed upon Respondent a duty to set a date, time, and place for further negotiations. It is held further that a reasonable period of time during which Respondent could have fulfilled this duty was the 20 days immediately following Crutchfield's return to his desk on April 10, 1950. It is concluded, therefore, that by
1253 its failure to fulfill this duty by April 30, 1950, and by its refusal at the reopened hearing to recognize the Union without questioning its majority, Respondent refused and now refuses to bargain collectively with the Union.

IV. The Effect of the Unfair Labor Practices Upon Commerce

Respondent's activities, set forth in Section III, above, occurring in connection with Respondent's operations described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in the unfair labor practices set forth above, I recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Respondent having discharged George B. Patterson, Jr., S. J. Sullivan, Walter S. Hill, T. W. Perkins, Leonard Flowers, Robert R. Hilker, A. O. Richardson, Allen W. Hingle, E. L. Stroupe because of their union and concerted activities, I recommend that Respondent offer to each of them immediate and full reinstatement to his former or a substantially equivalent position [23] without prejudice to his

[23] *The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch*, 65 NLRB 827.

seniority and other rights and privileges and make each whole for any loss of pay he may have suffered by reason of Respondent's discrimination against him, by payment to each of them of a sum of money equal to that which he normally would have earned as wages from September 3, 1949, the date of the discrimination against them, to the date when, pursuant to the recommendations herein contained, Respondent shall offer them reinstatement, less the net earnings of each during said period.[24] Loss of pay shall be determined by deducting from a sum equal to that which these employees would normally have earned for each quarter or portion thereof, their net earnings, if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter. The quarterly periods described herein shall begin with the first day of January, April, July, and October.[25] It is recommended further that Respondent make available to the Board upon request payroll and other records, in order to facilitate the checking of the amount of back pay due.[26]

Although Respondent also discharged Sterling L. Hicks September 3, 1949, because of his union and concerted activities, and he ordinarily would be entitled to the same rights recommended above for the other nine, such is not recommended in view of his conviction on March 24, 1950, in the Superior Court of Mecklenburg County, North Carolina, of the misdemeanor of conspiracy to damage Respondent's real property on January 12, 1950. It is recommended, rather, that Hicks be given back pay from the date of the discrimination against him until January 12, 1950, the date of the misdemeanor; that in the event the charging party of Hicks furnishes the Board with evidence that a court of last resort has reversed the conviction, the Board then

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[24] *Crossett Lumber Co.*, 8 NLRB 440, 497-8; *Republic Steel Corporation* v. *N. L. R. B.*, 311 U. S. 7.

[25] *F. W. Woolworth Company*, 90 NLRB No. 41.

[26] *F. W. Woolworth Company, supra.*

order his reinstatement with full back pay from the date of discharge, September 3, 1949, until the date of offer of reinstatement, less the amount he normally would
1254 have earned from the date of his conviction, March 24, 1950, until the date of reversal by the court of last resort.

It having been found that Respondent gave Hicks an "unsatisfactory" endorsement in violation of the Act, I recommend that Respondent reconsider whether Hicks should receive an "unsatisfactory" or a "satisfactory" endorsement, without reference to his union membership and activities and by the same standards it has followed in the past in the giving of "satisfactory" endorsements to all of its other technicians including Carey; and if upon such reconsideration Respondent decides that Hicks should be given a "satisfactory" endorsement, that Respondent so inform the Federal Communications Commission, and that it correct Hicks' recently expired license accordingly.

It having been found that Respondent refused to bargain collectively with the Union as the exclusive representative of their employees in an appropriate unit, I recommend that Respondent upon request bargain collectively with the Union as the exclusive representative of such employees with respect to rates of pay, wages, hours, and other terms and conditions of employment.[27]

Because of the Respondent's unlawful conduct and its underlying purpose and tendency, I find that the unfair labor practices found are persuasively related to other unfair labor practices proscribed and that danger of their commission in the future is to be anticipated from the course of the Respondent's conduct in the past.[28] The preventative purpose of the Act will be thwarted unless the order is coextensive with the threat. In order, therefore, to make effective the interdependent guarantees of Section 7,

[27] *N. L. R. B. v. Franks Brothers Co.*, 321 U. S. 702.
[28] *N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426.

to prevent a recurrence of unfair labor practices, and thereby to minimize industrial strife which burdens and obstructs commerce, and thus effectuate the policies of the Act, I will recommend that Respondent cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act.

Conclusions of Law

1. Jefferson Standard Broadcasting Company is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Local Union No. 1229, International Brotherhood of Electrical Workers, A. F. L., is a labor organization within the meaning of Section 2 (5) of the Act.

3. At all times material herein, the following employees of Jefferson Standard Broadcasting Company have constituted and now constitute a unit appropriate for the purposes of collective bargaining: all technical employees employed at the main control room, 608 Wilder Building, Charlotte, North Carolina; at the main transmitter, Nations Ford Road, Charlotte, North Carolina; at the FM transmitter (RAMLO station), Gastonia, North Carolina; and at the satellite transmitter, Shelby, North Carolina, excluding the chief engineer and all supervisors as defined in the Act.

4. On and since May 9, 1949, Local Union No. 1229, International Brotherhood of Electrical Workers, A. F. L., has been certified by the Board as the exclusive bargaining representative of the employees in the aforesaid appropriate unit in accordance with the provisions of Section 9 of the Act.

1255 5. By refusing on April 30, 1950, and at all times thereafter to bargain collectively with Local Union No. 1229, International Brotherhood of Electrical Workers, A. F. L., as the exclusive representative of all its employees in the aforesaid unit, Respondent has engaged in and is

engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

6. By discriminating in regard to the hire and tenure of employment of George B. Patterson, Jr., S. J. Sullivan, Walter S. Hill, T. W. Perkins, Leonard Flowers, Robert R. Hilker, A. O. Richardson, Allen W. Hingle, E. L. Stroupe, and Sterling L. Hicks, thereby discouraging membership in Local Union No. 1229, International Brotherhood of Electrical Workers, A. F. L., the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

7. By said acts Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, and has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that Jefferson Standard Broadcasting Company, Charlotte, North Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local Union No. 1229, International Brotherhood of Electrical Workers, A.F.L., or any other labor organization of its employees, by discriminating in regard to the hire and tenure of their employment or any term or condition of employment;

(b) Refusing to bargain collectively with Local Union No. 1229, International Brotherhood of Electrical Workers,

A.F.L., as the exclusive bargaining representative of the Respondent's employees in the appropriate unit, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist Local Union No. 1229, International Brotherhood of Electrical Workers, A. F. L., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Offer to George B. Patterson, Jr., S. J. Sullivan, Walter S. Hill, T. W. Perkins, Leonard Flowers, Robert R. Hilker, A. O. Richardson, Allen W. Hingle, and E. L. Stroupe immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed;

1256 (b) Make whole George B. Patterson, Jr., S. J. Sullivan, Walter S. Hill, T. W. Perkins, Leonard Flowers, Robert R. Hilker, A. O. Richardson, Allen W. Hingle, and E. L. Stroupe for any loss of pay they may have suffered by reason of the Respondent's discrimination against them, in accordance with the recommendations set forth in "The remedy," herein;

(c) Make whole Sterling L. Hicks for any loss of pay he may have suffered by reason of the Respondent's discrim-

ination against him, in accordance with the recommendations set forth in "The remedy," herein, for the period September 3, 1949, to January 12, 1950.

(d) Reconsider whether Hicks should receive an "unsatisfactory" or a "satisfactory" endorsement, without reference to his union membership and activities and by the same standards it has followed in the past in the giving of "satisfactory" endorsements to all of its other technicians including Carey.

(e) If, upon such reconsideration, Respondent decides that Hicks should be given a "satisfactory" endorsement for his period of service from September 1944 until August 29, 1949, Respondent shall so inform the Federal Communications Commission and shall so correct Hicks' license for that period.

(f) Upon request, bargain collectively with Local Union No. 1229, International Brotherhood of Electrical Workers, A.F.L., as the exclusive bargaining agent of all its employees in the bargaining unit described herein, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(g) Post at its main control room, 608 Wilder Building, Charlotte, North Carolina; the main transmitter, Nation's Ford Road, Charlotte, North Carolina; The FM transmitter (RAMLO station), Gastonia, North Carolina; and the satellite transmitter, Shelby, North Carolina, copies of the notice attached hereto marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being signed by the Respondent's representative, be posted by the Respondent and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall

be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(h) Notify the Regional Director for the Fifth Region, in writing, within twenty (20) days from the date of the receipt of this Intermediate Report, what steps the Respondent has taken to comply herewith.

It is further recommended that, unless the Respondent shall within twenty (20) days from the receipt of this Intermediate Report notify said Regional Director, in writing, that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same
1257 period, file an original and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the parties filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in Section 203.46 should any party desire permission to argue orally before the Board, request therefore must be made in writing to

the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed, as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 21 day of August 1950.

/s/ ALBA B. MARTIN
Trial Examiner

1258 **APPENDIX A**

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist LOCAL UNION No. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

WE WILL NOT discourage membership in LOCAL UNION No. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL, or any other labor organization of our employees, by discriminating in any manner with regard to their hire and tenure of employment, or any term or condition of employment.

WE WILL OFFER to George B. Patterson, Jr., S. J. Sullivan, Walter S. Hill, T. W. Perkins, Leonard Flowers, Robert R. Hilker, A. O. Richardson, Allen W. Hingle, and E. L. Stroupe immediate and full reinstatement to their former or substantially equivalent

positions, without prejudice to their seniority and other rights and privileges previously enjoyed.

WE WILL MAKE WHOLE George B. Patterson, Jr., S. J. Sullivan, Walter S. Hill, T. W. Perkins, Leonard Flowers, Robert R. Hilker, A. O. Richardson, Allen W. Hingle, and E. L. Stroupe for any loss of pay suffered by them by reason of the discrimination practiced against them, in accordance with the recommendations of the Intermediate Report.

WE WILL MAKE WHOLE Sterling L. Hicks for any loss of pay suffered by him until January 12, 1950, by reason of the discrimination practiced against him, in accordance with the recommendations of the Intermediate Report.

WE WILL RECONSIDER whether Sterling L. Hicks should receive an "unsatisfactory" or a "satisfactory" endorsement on his radio telephone operator license for his period of employment September 1944 until August 20, 1949. We will make this reconsideration and any necessary correction in accordance with the recommendations of the Intermediate Report.

WE WILL BARGAIN collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, wages, hours
1259 of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All technical employees employed at the main control room, at the main transmitter, at the FM transmitter, and at the satellite transmitter, excluding the chief engineer and all supervisors as defined in the National Labor Relations Act.

All our employees are free to become, remain, or refrain from becoming members of the above-named union or any other labor organization except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the amended Act.

JEFFERSON STANDARD
BROADCASTING COMPANY
(*Employer*)

Dated..... By.....
(*Representative*) (*Title*)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

2 **EXCERPTS FROM TESTIMONY AND PROCEEDINGS**

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Fifth Region

In the matter of:

JEFFERSON STANDARD BROADCASTING COMPANY

and

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F. OF L., LOCAL 1229.

Case No. 34-CA-170.

Federal Court Room, U. S. Post Office,
Charlotte, North Carolina,
Monday, March 13, 1950.

Pursuant to notice, the above-entitled matter came on for hearing at 10:30 a.m.

BEFORE:

ALBA B. MARTIN, Trial Examiner

APPEARANCES:

MILES J. McCORMICK, Esq., JOHN K. PICKENS, Esq., 231 Nissen Building, Winston-Salem, N. C., appearing on behalf of the General Counsel.

W. S. BLAKENEY, Esq., Johnston Building, Charlotte, North Carolina.

and

F. T. MILLER, Jr., Esq., Law Building, Charlotte, North Carolina, appearing on behalf of Jefferson Standard Broadcasting Co., the Respondent.

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Trial Examiner Martin: Do you know whether or not anybody is going to appear on behalf of the charging union?

Mr. McCormick: It is my understanding that the representative of the union who is present here does not desire to make an appearance at this time.

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Trial Examiner Martin: On the record. Mr. Blakeney, have you any objections to receiving General Counsel's Exhibits 1(a) through 1(l), other than as contained in your motion?

Mr. Blakeney: No, sir.

Trial Examiner Martin: Well, I will receive in evidence General Counsel's Exhibits 1(a) through 1(l), and I will deny Respondent's motion.

(The documents heretofore marked General Counsel's Exhibit Nos. 1(a) through 1(l) for identification were received in evidence.)

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Mr. McCormick: General Counsel's Exhibit 2, comprising exhibits marked for identification 2-a through 2-j, have been stipulated to as letters written by the company and delivered to the named individuals on each letter.

• • • • • • • • • • •

Mr. McCormick: I stipulate they were received on or about September 3 or 4, at various hours during the two days. That is agreeable with the company?

Mr. Blakeney: We are so informed and believe. We will so stipulate.

• • • • • • • • • • •

Mr. Blakeney: That is so stipulated.

Mr. McCormick: So stipulated.

Trial Examiner Martin: Very well. Are you offering these in evidence?

• • • • • • • • • • • •

37 STERLING L. HICKS

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. McCormick) What is your name?

Trial Examiner Martin: Please give your name and address to the reporter.

A. Sterling L. Hicks, 3004 Idlewood Circle, Char-
38 lotte, North Carolina.

Q. Mr. Hicks, are you a member of any union? A. Yes, sir.

Q. What union? A. Local Union 1229, International Brotherhood of Electrical Workers.

Q. How long have you been a member of that union? A. Thirty-one years.

Q. Have you ever held any offices in that union? A. Yes, sir.

Q. What? A. President, Vice-President, Business Manager, Financial Secretary.

Q. Have you ever been employed by the Jefferson Standard Broadcasting Company? A. Yes, sir.

Q. Will you give the dates of your employment by that company? A. I began to work for it March 19, 1939, up until September 3, 1949.

Q. Will you tell the Examiner the offices in the Local 1229 which you held during that period of employment? A. I was president at one time and I have been business manager for the local ten years.

Q. You were business manager then during the en-
39 tire period of your employment? A. That's right.

• • • • • • • • • • • •

70 Q. When you went to work with WBT, was there a union contract in existence at the time? A. Yes, sir.

Q. Between what union and company was that contract? A. Between the Columbia Broadcasting System and the IBEW.

Q. Would you mind stating the appropriate unit, that is the unit for which this IBEW bargained?

Mr. Blakeney: I object. How is that pertinent to this case?

Trial Examiner Martin: Do you wish to press that question?

Mr. McCormick: No, sir. That is a very pertinent question. I want to show that this company has engaged in anti-union activities during the bargaining negotiations
71 for a unit here. The witness will express it. I don't want to say it for him, that this unit has been in existence for a period of ten years.

. . . . . .

Mr. McCormick: Yes, when he went to work. What unit did the IBEW represent at the time you went to work? A. All technical employees employed by WBT.

Q. How long has this union been representing that unit? A. Ten years.

Q. When did you have your last contract with this company? A. Just prior to the sale to the Jefferson
72 Standard Life Insurance Company.

Q. That is the the last contract you had when? A. No, that is the last contract we had with Columbia, just prior to the sale of the station to the Jefferson Standard Broadcasting Company.

Q. Did Jefferson Standard Broadcasting Company assume the obligations under that contract? A. They did.

Q. What is the last contract you had with Jefferson Standard Broadcasting Company? A. Ended January 31, 1949.

Q. When did you commence negotiations, looking for-

ward to a new contract? A. We had a short meeting on December 27. Negotiations got under way on January 10.

Q. And how long did you meet? A. That day?

Q. Yes. A. I think we adjourned late in the afternoon.

Q. When did you meet next? A. I think we were in session for about a week at that time.

Q. Do you recall when you met again? A. Met on the 25th and we were in constant session from then until 1:30 a.m., February 1.

. . . . . .

73 Q. Did you ever file a petition for certification with the Board? A. We filed a petition for certification with the Board on October 28, 1948.

74 Q. Do you recall when the hearing was held? A. The hearing was held May 2, 1949.

. . . . . .

Mr. McCormick: I move for the Trial Examiner to take judicial notice of the proceedings in the R case which I will now give you. The petition was filed October 22, 1948; hearing held January 6, 1949; decision and direction of election handed down April 8, 1949; the election was held April 8, 1949; there were sixteen employees voting, 16 eligible; 12 voted for the union; two against the union; certification issued April 9, 1949.

Mr. Blakeney: I think those facts as Mr. McCormick stated are correct, but they are not pertinent to this case. I move that be not allowed in evidence, or if they are in, I move that they be stricken.

. . . . . .

76 Trial Examiner Martin: For what it is worth, I will permit it to stand.

. . . . . .

78 Q. Did the company make any suggestions as to possible provisions in that contract? A. Yes, sir.

Q. What? A. You mean the arbitration clause?

Q. As to any clause. A. They gave us a clause that was not acceptable to the union. The clause was we would submit it to arbitration, but only if we were fired, what they said we were fired for would be the thing. Therefore, the arbitrator had no right to rule on it.

* * * * * * * * * * *

82 Q. Now did you negotiate during the month of July, 1949? A. Yes, sir.

Q. What? A. On the 8th day of July, I guess.

Q. What was the result of that negotiation? A. No progress at all.

Mr. Blakeney: I object on the ground that is immaterial. Progress in negotiations? That is exactly the same question he had before.

Mr. McCormick: I withdraw the question.

Trial Examiner Martin: Very well.

Q. What did you do on the night after you met and negotiated with the company, on the night of July 9 or July 8?

A. Eighth. We had a special meeting of the local
83 union and it was voted that beginning Saturday morning, July 9, that we would put a peaceful picket in front of the WBT studios.

Q. For what purpose? A. To notify the public of the position that the company was taking towards us, the attitude of the company.

Q. How many people were present at this meeting? A. There were about nineteen, eighteen or nineteen people.

Q. How many technicians were present? A. They were all but Mr. Callahan, Mr. Painter and Mr. Walker, who were members of the local, all of them were present, and there was two announcers and one technician that was not a member of the union.

Q. When did you put into effect or did you put into effect this resolution to picket peacefully to acquaint the public with your views? A. At the meeting of July 8, midnight.

Q. You put the picket line on that night? A. No, we

put the picket line on the next day, after the motion was carried that night, unanimous vote.

Q. You started picketing the next day you say? A. Yes, sir.

Q. How long has that picketing continued? A. Up until the present time.

Q. I show you General Counsel's Exhibit 10, comprising 10-a to 10-I, and ask you if you have ever seen these?

84 (Thereupon the documents above referred to were marked General Counsel's Exhibit Nos. 10-a through 10-I for identification.)

A. Yes, sir.

Q. What are these? A. Those are handbills that were printed and handed out to the public on the streets.

Q. In each right-hand corner there is a date. What does that date signify? A. That is the publication date.

Q. Now I ask you to identify 10-I particularly, what is that? A. That is a handbill that was distributed in Greensboro to the employees of the Jefferson Standard Life Insurance Company.

Q. On what date? A. Latter part of August.

Q. It is dated 8-31, is that correct? A. I think they received them out of the printer's that morning and they went to Greensboro that afternoon and they were distributed.

Q. I call your attention particularly to 10-D. What is that? A. That is a handbill that was handed out to the people in Charlotte.

Q. On what date? A. It was distributed on August 26.

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86 Trial Examiner Martin: I will receive General Counsel's Exhibits 10-a through I, inclusive.

(The documents heretofore marked General Counsel's Exhibit Nos. 10-a through 10-I for identification were received in evidence.)

Q. Will you state again how long this picketing con-

tinued? A. It has continued from July 9 until the present time.

Q. When were you notified you were discharged? A. I received my notice on September 6, dated September 3.

Q. Was there any violence on the picket line? A. None whatever.

Q. Did anybody lose any time from work because he was picketing? A. No, sir.

. . . . . .

87 Q. Did any of them cease picketing? A. Yes, sir.

Q. Name them please? A. E. A. Sellars and W. H. Hickland.

Q. When did these people cease picketing? A. Sellars quit after about two weeks and I think Hickland run three weeks or a little over.

Q. Were these people discharged with the ten who were discharged? A. No, sir.

Q. So far as you know, they are still working, is that correct? A. Yes, that's right.

Q. I will ask you to look at General Counsel's Exhibit 10-D. When was that distributed? A. 10-D?

Q. Yes, that is this. When was this distributed? A. August 26.

Q. Who distributed that? A. Do you want the names of the men?

88 Q. Yes. A. Hingle, Patterson, Stroupe — no, Stroupe didn't. Hingle, Patterson, Hicks, Hill. I believe those are the—and Sullivan, five of us.

Q. How many people were picketing during that period? A. There were two. All these were picketing at times, but the picket line continued and we went to the square and gave these out.

Q. The total number of people engaged in the picketing at the time this leaflet was handed out is what I want to know. A. There was five of us.

Q. Where were the other five? A. Only two ceased pick-

eting. What happened to the other five? A. There were three that weren't there.

Q. Where were they? A. One was in Washington; one was in Winston-Salem; and the other did not give out handbills.

Q. Name the one in Washington. A. Stroupe.

Q. Name the one in Winston-Salem. A. Hilker.

Q. Name the ones who did not give out handbills. A. I say he was in Winston-Salem. I don't know whether he was in Winston-Salem or Gastonia. He was out of town.

Q. Name the one who did not give out handbills. A. Flowers.

89 Q. Were you in charge of the organization of the picket line? A. Yes, sir.

Q. You assigned the men the times they were to picket? A. That's right.

Q. You know as a fact that none of those people whose names you have just mentioned, Hingle, Flowers and Stroupe gave out this second-class city leaflet? A. None of those gave them out; no, sir.

Q. Did anybody ask you who gave out these second-class city leaflets? A. No, sir.

Q. Anyone with the company? A. No, sir.

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96 Q. How long has the terminus of this coaxial cable been in Charlotte? A. Approximately two years.

Q. Do you know whether this coaxial cable is connected with anything north of this point? A. I understand it is.

Q. What points? A. Richmond, Washington.

Q. Do you know whether or not anything is transmitted over this coaxial cable? A. No, I don't.

* * * * * * * * * * *

105 Q. I show you, Mr. Hicks, General Counsel's Exhibit 4(a) and (b). Do you recognize those? A. Yes, sir.

Q. What are they? A. A telegram sent by Mr. John A.

Thompson, International Representative of the IBEW to Mr. Crutchfield.

Q. Did you authorize that telegram to be sent? A. I did.

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107 Trial Examiner Martin: I will receive in evidence General Counsel's Exhibits 4(a) and (b).

(The documents heretofore marked General Counsel's Exhibit Nos. 4(a) (b) for identification were received in evidence.)

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110 Q. Mr. Hicks, just to clarify the record, how many employees were on the picket line at the beginning of the picketing on July 9? A. Twelve.

Q. These were all technicians? A. Yes, sir.

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111 Q. How many employees were employed as technicians who did not picket and what are their names? A. There were three. Henderson, Painter and Walker.

Mr. Blakeney: You are right as to those three.

112 Mr. McCormick: No, Mr. Blakeney, you were wrong.

Trial Examiner Martin: It is your testimony these three men never did picket?

The Witness: That's right.

Q. Were those three men discharged with the others? A. No, sir.

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Cross Examination

Q. (By Mr. Blakeney)

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129 Q. Now about the picketing. You say that this pamphlet, Exhibit 10-D for the General Counsel, which is headed "Is Charlotte a Second Class City", you say that was put out when? A. August 26.

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130 Q. Where did you put it out? A. On the Square and there were a few handed out on the picket line. There were four men on the Square.

Q. Who was handing them out on the Square? A. Mr. Hill, Hingle, Thompson and I.

Q. How long would you say you were up there handing them out? A. We were there approximately two hours.

Q. Do you remember what day of the week it was? A. It was on Friday.

Q. How many would you say you handed out there probably? A. We got rid of about 5,000.

Q. About 5,000 up there at the Square? A. That's right.

Q. You say some also were put out down in front of the Wilder Building? A. A few.

Q. Who put those out in front of the Wilder Building? A. Those men on the picket line.

Q. Do you remember who they were? A. Patterson, Richardson and Sullivan.

Q. Patterson, Richardson and Sullivan. A. (Spel-
131 ling) S-u-l-l-i-v-a-n.

Q. Anyhow, when you were up there on the Square giving them out, who did you give them to? A. Anybody that passed along.

Q. Everybody? A. Yes.

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Q. Now what did you tell the folks at the time you gave them the handbills? A. Didn't tell them anything.

Q. Did each of you have a bunch in his hand giving them out? A. That's right.

Q. All at the same place? A. No, one on each corner.

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132 A. No, sir.

Q. Didn't have anything except these leaflets and would hand them out with your hands as folks would come by? A. That's right.

Q. Now did you all not give out except on those corners

or did you go up and down the street some? A. No, we remained right on the corners until we came back to the picket line and we give some out on the picket line.

Q. Well now, how far is it down there to that picket line? A. Two blocks.

. . . . . .

133 Q. Now you say Mr. Stroupe didn't give out any of those? A. That's right.

Q. How do you know he didn't? A. Because he was in Washington.

Q. On the 26th? A. Yes, sir.

Q. How do you happen to know that? A. Because I know Mr. Crutchfield had a meeting scheduled with Mr. Wimberly on that day. Mr. Stroupe went up to be there in case he needed him.

Q. Mr. Crutchfield had a meeting with Mr. Wim-
134 berley? A. That's right.

Q. Who is he? A. Our immediate—in other words, he is over the Radio Division of the IBEW.

Q. He is the head man in radio of IBEW? A. Yes, sir.

Q. Mr. Hilker, he was not there, because he was in Winston-Salem or Gastonia? A. Yes, sir.

Q. How do you know that? A. Because I knew he was working in Gastonia or else he wanted to go to Winston-Salem to see his people.

Q. Mr. Flowers you say he didn't give out any? A. No, sir.

Q. How do you know that? A. Because he never give out any of those handbills, even though he was on the line, he wouldn't give them out.

Q. He wouldn't give those out? A. No, sir.

Q. Why? A. It was his policy not to give them out, I think. He didn't take any part in any of them.

Q. Mr. Flowers never has given out handbills? A. That's right.

Q. Never has given out any? A. I don't think
135 he has.

Q. What does he do on the picket line? A. Carry the banner.

Q. What? A. Carry the banner.

Q. He had a policy against giving out handbills. Did he say his reason was he didn't want to give this handbill out? A. That, I don't know.

Q. Did you ask him to? A. No.

Q. So far as you know, did anybody ask him to? A. Frankly, I don't believe he was here that day.

Q. You are not certain about that? A. No, I am not sure, but I don't think he was here that day.

Q. You don't know where he was? A. No, sir.

Q. Do you know when he came back? A. No, sir.

Q. Do you know when Hilker came back? A. I think it was on Saturday, the following Saturday.

Q. Do you know when Stroupe came back? A. Stroupe came back sometime Saturday.

Q. All three of them went back Saturday? A. No, I don't know whether Flowers was back or not.

Q. Flowers came back Monday? A. I think he
136 was back then.

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152 Q. This particular leaflet 10-D, how was that written up, do you recall? Who did that? A. What do you mean, how was it written up?

Q. Do you recall who wrote it? A. Thompson and I wrote it.

Q. Did you all have a committee or a group or did you take these leaflets up with all these technicians before you put them out? A. I represented the organization and Mr. Thompson represented the International and we got together and did all this work together.

Q. You mean to say now these men who gave these leaflets out don't know what they are going to say? A. Oh, yes, definitely, they know what they are going to say.

Q. What those leaflets say? A. They see them before

they ever go on the line, the Executive Committee of
153 the organization.

Q. The Executive Committee. You present the wording of those proposed leaflets to your committee? A. No, we have the leaflet printed, then present it to them.

Q. Then present it to the committee? A. That's right.

Q. Who constituted the Executive Committee? A. You mean the names?

Q. Yes. A. Hingle, Stroupe, Hill, Hilker, Sullivan, Richardson and Perkins until he left.

Q. And Perkins until what? A. Until he left Charlotte.

Q. Where did he go? A. New York.

Q. When, do you know? A. He went sometime in November.

Q. Up until that time though he was on the Executive Committee? A. Right.

Q. Now after these leaflets were printed, you would present them to the Executive Committee to see if they thought they were all right to hand out? A. Right.

Q. Which is what you did with leaflet 10-D? A. All of them.

154 Q. None of them objected to 10-D, did they? A. No, sir.

Q. Each of them said "go ahead and distribute them", is that right? A. I can't say they said "distribute them". They approved the bills.

Q. They knew they were for the purpose of distribution, of course? A. That's right, yes.

Q. Now I hand you here a paper writing which has been marked for identification Respondent's Exhibit ? and ask you if that is a photostatic copy of a letter bearing your signature? A. It is.

(Thereupon the docment above referred to was marked Respondent's Exhibit No. 2 for identification.)

Q. Look that over and see if it is a true and accurate copy of a letter that you wrote? A. It is.

Q. Did you mail that letter on or about the date it bears, August 6, to the addressee named therein? A. I did.

Q. That is Federal Communications Commission, New Post Office Building, Washington 25, D. C.? A. I did.

Q. Did you send copies to the parties indicated on
155 the letter as having copies directed to them? A. I did.

Q. Did you send copies then or thereafter to any other persons or parties? A. Yes, I sent some to the International office in Washington.

Q. Do you recall about when, how long after the writing of this? A. I think it was very near the same day.

Q. Do you recall sending or handing or delivering in any manner or mailing copies to any other persons or parties? A. No, I don't recall.

Q. Now this particular letter I take it you wrote it. Did you or Mr. Thompson write it? A. I wrote the letter.

Q. You took that up with your Executive Committee? A. I did.

Q. The same Executive Committee you have named? A. That's right.

Q. Before you mailed it and you told them you were going to mail it? A. Yes.

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156 Redirect Examination

Q. (By Mr. McCormick)

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186 We discussed these grievances and as we could not back up one of them, we withdrew one. That was the matter of posting the schedule on certain days. But we did push the violation of the jurisdictional clause. We didn't get anywhere with the meeting with Mr. Blakeney and Mr. Minor nor Mr. Carey. Mr. Carey made a remark Mr. Minor told him if he would discontinue his union antagonism, that he could get along a lot better with the union. Mr. Carey says, "That is grounds for a suit against the

IBEW." Mr. Thompson says, "You can sue whenever you want to." Just as we were leaving the meeting, Mr. Carey mentioned to Mr. Thompson that he would like to see him in his hotel room and discuss these matters. Carey or Thompson invited him down. As I understand, Carey never did show up.

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202 Q. When did you all decide that the technicians were to picket the plant? A. I didn't decide it. The
203 Local decided it.

Q. When did the Local decide it? A. Midnight, July 8th.

Q. What year? A. 1949.

Q. When did the picketing commence? A. Saturday morning, July 9th.

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Q. How many, according to your picket schedule,
204 of the ten left distributed what has been marked for identification General Counsel's Exhibit 10-D? A. How many of them did distribute this?

Q. Yes. A. Seven.

Q. Will you name those? A. Hingle, Richardson, Perkins, Hill, Sullivan, Hicks. There was one more—Patterson.

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205 Recross Examination

Q. (By Mr. Blakeney)

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223 Trial Examiner Martin: Well, I just have one or two questions. I guess I will go ahead before we recess. Mr. Hicks, during the time of the picketing, did the men work at their jobs the regular number of hours and then picket in addition to that?

The Witness: Up until September 3, yes.

Trial Examiner Martin: And up until September 3, can you tell me if you know whether or not any of the men lost

any time from their employment for the purpose of picketing?

The Witness: To my knowledge, no.

Trial Examiner Martin: That is, are you informed?

The Witness: Yes, sir. I say to my knowledge, no, no time was lost.

Trial Examiner Martin: And then since September 3rd?

The Witness. We have maintained a regular picket line every day, Monday through Saturday.

224 Trial Examiner Martin: Well, since September 3, have you had men on the picket line, that is more men at one time?

The Witness: No, there have only been two men; two men all the time.

Trial Examiner Martin: Now there are in evidence a number of leaflets which you have testified the union put out?

The Witness: Yes, sir.

Trial Examiner Martin: To your knowledge, did the union put out and distribute any other leaflets other than those that are now received in evidence?

The Witness: No, sir.

Trial Examiner Martin: They are all here, are they?

The Witness: They are all here. The copies are here, not the leaflets we put out, the copies of the leaflets.

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227 ROBERT R. HILKER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Q. Trial Examiner Martin: Please give your name and address to the reporter.

The Witness: Robert R. Hilker; 1208 Fordham.

Q. (By Mr. Pickens) Mr. Hilker, will you tell the Examiner, were you ever a member of any labor organization? A. I was.

Q. Which one? A. Local 1229, IBEW.

Q. For how long? A. Including service time, about six years now.

Q. From approximately what date would you say you were a member? A. About '44 sometime.

Q. Have you ever been employed by the Jefferson Standard Broadcasting Company? A. I have.

Q. How long have you been employed at WBT? A. Since February 9, '47.

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229 Q. While you were on this picket line, did you help distribute these leaflets that have been put in evidence General Counsel's Exhibits 10-A through I? A. Yes.

Q. Do you know whether you distributed all those leaflets or not? A. I distributed everything except the second class city.

Q. I show you General Counsel's Exhibit 10-D, title of which is, "Is Charlotte a Second-Class City". Did
230 you distribute that leaflet? A. No, I happened to be out of town.

Q. Where were you out of town? A. I was in Gastonia. I have—I was on a station log at the time, so I have that as evidence.

Q. That is the way you know you were out of town, because it is on the WBT station log? A. No, sir, it is another station in Gastonia.

Q. What station is that? A. WLTC.

Q. So you are sure you didn't distribute this leaflet? A. Yes, sir, I was out of town.

Q. And you didn't distribute it any other time? A. Not that I know of; no, sir.

Q. You would be sure, you would know if you did distribute it, wouldn't you? A. I feel like I would.

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233 Cross Examination

Q. (By Mr. Blakeney)

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240 Q. You say you had distributed all the leaflets the union put out except this 10-D, that is the one "Is Charlotte a Second-Class City", you distributed all except that? A. Yes, sir.

Q. How did it happen you didn't distribute that, because you were in Gastonia? A. Yes, sir.

Q. You say you were at Gastonia working for Station WLTC? A. That's right.

Q. Did you work for them pretty regularly? A. Once in awhile. I think at that time the manager's mother died and he asked me if I would come over and work two or three days for him. I think I did.

Q. How often did you go over there and work? A. Maybe one shift a week.

Q. About one shift a week. Had it ever before interfered with your giving out leaflets? A. Occasionally it made me miss. Sometimes, yes.

Q. But you say— A. In fact, that whole week I was out, or the whole next week I was out following that. I think it happened on Friday; I went over there on Saturday. I doubled up so the fellow could get gone.

Q. In other words, you started being absent and away from the picket line on Saturday? A. I think that's
241 right, as well as I remember.

Q. And then you were gone for a week? A. Yes, sir.

Q. Up to that time you had been on the picket line regularly? A. Yes, sir.

Q. And had been distributing everything that was distributed? A. Yes, sir.

Q. During that week, or course, you weren't on the picket line at all and didn't distribute anything? A. That's right. I don't know why it just happened to hit that way. It was a coincidence.

Q. Now did you work full shifts over there all that week? A. As well as I remember, I did. It did not conflict with my WBT duties, because I was working the night shift.

It was hard, yes, but it was kind of an emergency and the fellow would do the same thing for me now.

Q. Over there at Gastonia you worked at night time? A. Daytime.

Q. And worked at WBT at night? A. That's right.

Q. You are pretty clear that you started working over there at Gastonia on this stretch on a Saturday morning? A. Yes, sir, I feel sure it was. I can check the log to be specific.

Q. And that you worked then through the next
242 Saturday? A. Through the next—I think it ended on Thursday, he came back.

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249 Redirect Examination

Q. (By Mr. Pickens) Did any supervisor or any other company official ever ask you what leaflets you distributed? A. Not that I recall.

Q. Did they ever talk to you at all concerning any of the leaflets, ask you whether you in fact had distributed them? A. Not that I recall.

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252 L. V. FLOWERS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Pickens) State your name.

Trial Examiner Martin: Give your name and address to the reporter, please.

The Witness: L. V. Flowers, Route 2, Gastonia, North Carolina.

Q. (By Mr. Pickens) Mr. Flowers, are you a member of any labor organization? A. I am.

Q. Which one? A. The IBEW, Local 1229.

Q. How long have you been a member? A. Oh, little more than three years.

Q. Were you ever employed by the Jefferson Standard Broadcasting Company? A. Yes, sir.

253 Q. Could you give me the period during which you were so employed? A. Sometime the latter part of May, 1947 to September 1, 1949.

Q. While you were so employed, what were your duties? A. Operate control room, part of the time. Part of the time I was transmitter operator.

Q. During which periods were you operating the control room? A. When I first went to work, I was in the FM control room. Then I was transferred to transmitter. Then I was transferred back to the studios. I was worked at the studios when I was discharged.

Q. When you were discharged you were working at the studios? A. Yes, sir.

Q. Did you attend the union meeting held July 8, 1949? A. Yes, sir.

Q. Did you engage in the picketing of WBT, I mean in front of the Wilder Building? A. Yes, sir.

Q. Did you pass out any of the leaflets while you were on picket duty? A. Just a few, very few.

Q. I show you General Counsel's Exhibit 10-A. Do you remember whether you distributed that one or not? A. I don't remember this one in particular; no.

254 Mr. Blakeney: I didn't get his answer.

(Last answer read.)

Q. I show you General Counsel's Exhibit No. 10-B, entitled "What's Cooking". Do you remember distributing that? A. Yes, I passed out this.

Q. You passed 10-B out. I show you 10-C which is entitled "WBT Unjustly Discharges Ten Engineers". Do you remember passing that one out? A. No, I don't.

Q. You may have? A. I may have, but I don't remember this one in particular.

Q. I now show you General Counsel's Exhibit 10-D, "Is Charlotte a Second-Class City". Do you remember distributing that? A. No, I didn't distribute this.

Q. You did not distribute it? A. No, sir.

Q. Why didn't you distribute it? A. I didn't quite approve of it.

Q. You didn't approve of that leaflet?. A. No.

Q. Were you on the picket line the day it was distributed? A. Yes, sir.

Q. But you did not distribute it? A. No.

Q. You say you didn't approve of the leaflet? A.
255 No, I didn't approve of it.

Q. Did you so inform the union? A. I think so. I can't be positive, but I know I refused to distribute it, because everybody else distributed it but me that was there.

Mr. Blakeney: What was that answer?

(Last answer read.)

Q. Did any supervisor or any official of the company ever ask you whether or not you distributed that leaflet 10-D? A. No, sir.

Q. Did they ask you whether you distributed any leaflets or not? A. No, sir.

Q. I show you General Counsel's Exhibit 10-E entitled "Notice To Public". Did you distribute that? A. I think probably I did a few of these. I handed out just a few of most of them—not near all of them.

Q. You didn't object to this exhibit? A. No, I didn't.

Q. I show you General Counsel's Exhibit 10-F, also entitled, "Notice to the Public". Do you remember whether you distributed that or not? A. Why this is a duplicate of this. I could have. I don't know.

Q. I show you General Counsel's Exhibit 10-H,
256 also entitled "Notice to the Public". Do you remember distributing that? A. No, I don't.

Q. Do you remember objecting to this leaflet? A. No.

Q. I show you General Counsel's Exhibit 10-I, "Is Job Security Important to you". Do you remember whether

you distributed that one or not? A. No, I didn't distribute any of these.

Q. You didn't distribute 10-I? A. No.

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257 Cross Examination

Q. (By Mr. Blakeney)

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260 Q. This is the only one where you ever said to them, "I don't like this one, I don't approve of this one, I don't want to distribute this one"? A. Oh, I said I didn't approve of any of them. I told them that.

Q. But did you ever buck on distributing any one of them except this one? A. Oh, yes, sure.

Q. Which ones? A. I don't remember which particular ones, but several times they have asked me to distribute leaflets and I refused to distribute.

Q. Did you ever buck on the content of any one except this one? A. I was not exactly bucking on the content of this one.

Q. I thought you said you read it and when you read it, you didn't approve of it and wouldn't distribute it? A. I didn't approve of any of them. I didn't see where it would do us any good to distribute these leaflets.

Q. Did you disapprove of what they said? A. Well, I couldn't see anything, any lie about it, it all looked true to me, as far as I knew.

Q. Yes but what I am asking you now is, you say that on this occasion you took this leaflet and you read it and you then said to him, "I don't want to distribute this", but the man who was with you, he was willing to go
261 ahead and distribute it? A. I don't remember whether it was before I read the thing or after I read it that I refused to distribute it, but I did read it on the picket line, before they went to the Square with it.

Q. You said you didn't approve of it? A. No, I didn't approve of it.

Q. What? A. No, I didn't approve of it.

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262 A. W. HINGLE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Trial Examiner Martin: Please give your name and address to the reporter.

The Witness: A. W. Hingle, Route 8, Charlotte.

Direct Examination

Q. (By Mr. Pickens) Mr. Hingle, are you a member of any labor organization? A. Yes, the IBEW, Local
263 1229, Charlotte.

Q. How long have you been a member? A. Approximately ten years.

Q. Have you ever been an officer of that union? A. Yes, I have been president.

Q. When were you president? A. I was president for two years, from '47 until '49.

Q. What month in 1947? A. July, first of July. Term expired last of June.

Q. Were you also on the negotiating committee? A. I was on the negotiating committee.

Q. Were you on the Executive Committee? A. I was on the Executive Committee by being president of the Local, until 1949, July 1. I was not on the negotiating committee —not on the Executive Committee after that time until I was replaced. Mr. Richardson went to New York and I was put on the Executive Committee later in the year.

Q. About what month? A. Oh, around November I guess of '49.

Q. You weren't on the Executive Committee when these leaflets were distributed? A. I was not on the Executive Committee.

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269 Trial Examiner Martin: Well, perhaps I can clear it up by asking a question or two myself. Would you say, Mr. Engle, that there were one or two or three specific subjects which the parties were unable to reach
270 an agreement on?

The Witness: There was one subject.

Trial Examiner Martin: One subject?

The Witness: That was definite.

Trial Examiner Martin: What was that subject?

The Witness: The subject was on a discharge. If I could explain that, I think it would explain it all.

Trial Examiner Martin: What do you mean by that?

The Witness: We had had a discharge clause in our previous contract which brought it to arbitration if a man was discharged, he could arbitrate it. The company wanted a clause in there that said that a man had a right to arbitrate that question of the discharge, but only for the cause, of which the company said.

Now in Mr. Hicks's statement, he said a Chevrolet was used as an example. Not only was a Chevrolet used, but Mr. Crutchfield used the "hair parting". He said if you didn't part your hair on the right side of your head and I wanted you to part it over on that side, and I said that is the cause of the discharge, that's all the Arbitration Board could decide on, whether you did or did not part your hair.

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277 Q. Well, in one sentence or two, could you summarize the proposals made by the company to which the union felt they could not accede?

* * * * * * * * * * *

278 A. There were many proposals made, but none were serious—none other than this discharge clause. All other proposals we could have gotten together.

Q. Will you explain to the Examiner what you mean by none of them were serious other than this? A. There were

a lot of proposals made by the company that were not steadfast, that they changed their mind about. We made proposals in normal bargaining that we got together on. But the one thing that they would not talk about or they would not have anything to do in changing it was that discharge clause. They held fast to that, that they wanted the right to discharge a man for any cause that they saw fit.

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279 Q. I show you General Counsel's Exhibit 10-A and ask you if you distributed that? A. I did.

Q. I show you 10-B and ask you if you distributed that? A. At both doors too, front door and side door.

Q. General Counsel's Exhibit 10-C? A. I did.

Q. Did you distribute that? A. Yes.

Q. 10-D, entitled "Is Charlotte a Second Class City"? A. I distributed it.

Q. Did you approve of it? A. I didn't approve of it, but I did distribute it.

280 Q. Why didn't you approve of it? A. I just didn't approve of that type handbill.

Q. But did you have an objection to handbills in general? A. Not necessarily. Not if it—the others I approved all except that one. I did not approve of that handbill.

Q. Did you distribute 10-E? A. I did.

Q. I show you General Counsel's Exhibit 10-F. Did you distribute that? A. I did.

Q. I show you General Counsel's 10-H. Did you distribute that handbill? I mean as far as your remember? A. Yes.

Q. I show you General Counsel's Exhibit 10-I, entitled "Is Job Security Important to you". Do you remember distributing that? A. I did not distribute that.

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283 Q. At any time that you were on the picket line, do you remember of any violence ever occurring? A. Never heard or seen any violence on the picket line.

Q. Any loud boisterous talking? A. Not from the
284 picketers.

Q. I have one more question, Mr. Examiner. During any time you were on the picket line, did your picketing duties ever cause you to miss any time that you should have been devoting to your job at WBT? A. Never.

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286 ELWOOD L. STROUPE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Trial Examiner Martin: Please give your name and address to the reporter.

The Witness: Elwood L. Stroupe. 2138 Cumberland Avenue, Charlotte.

Direct Examination

Q. (By Mr. McCormick) Mr. Stroupe, how long have you been employed by WBT? A. WBT, little over twelve years.

Q. How long by the Jefferson Standard Broadcasting Company? A. Since it was bought by them in September of '45, I believe.

• • • • • • • • • •

308 Q. What equipment did you say you installed in WBTV? A. Two 16 millimeter film projectors. One film camera. One multiscope. One camera switching unit. One film camera monitor and the associated power supplies, generator, and a few other items.

Q. With all this equipment, could WBTV broadcast a ballgame held in Raleigh? A. No.

Q. With all of this equipment, could WBTV broadcast a singer in its own studios? A. It could broadcast the sound, but not the picture.

Q. Of your own knowledge of the industry, does
309 Atlanta, Georgia have a television station? A. I understand they do.

Q. Does Atlanta, Georgia have equipment, from your knowledge of the industry, which would permit them to pick up live broadcasts? A. It is my understanding that they do have.

Trial Examiner Martin: What is a live broadcast?

Q. Explain to the Examiner what a live broadcast is. A. Well, a live broadcast in television would be where you have the actors on the scene or pick up a ballgame and broadcast it direct at the same time it is going on.

Q. Will you read his answer?

(last answer read.)

Q. With your knowledge of the industry, does Greensboro, North Carolina have a television station? A. Yes.

Q. With your knowledge of the industry, does Greensboro—couldn't Greensboro, North Carolina's television station broadcast a singer in its own studios? A. Yes. I understand they have a studio camera there.

Mr. Blakeney: Well, he says he understands this and he understands that. I move that be stricken out.

Trial Examiner Martin: I will permit the answer to stand.

Q. What is required to broadcast a live television
310 show? A. There is just one thing, a studio camera chain for a studio broadcast, or a field camera chain for a field broadcast. That is a ballgame, football game or something like that, plus a transmitter, microwave relay transmitter and receiver, to get the program and picture from the scene of the pick-up to the transmitter.

Q. Does WBTV have any of this equipment that you have just said is necessary for live broadcasts? A. They didn't have when we were discharged. I don't know what they have now.

. . . . . .

312 Q. I have just shown you General Counsel's Exhibits 21 and 22. Could you tell me if in there is a picture of the equipment necessary to pick up a live broadcast? A. Yes, sir, there is.

Q. Could you tell me of your own knowledge if there is any technical difficulty which prevents the purchase of that equipment at WBT?

Mr. Blakeney: I object. What do you mean by "technical difficulty" that prevents the purchase? Enough money might be quite a technical difficulty, mighten it?

Trial Examiner Martin: Do you wish to clear the question?

313 Q. Is there any engineering difficulty which prevents the purchase of that equipment and its use by WBTV? A. I don't see why there should be, no.

* * * * * * * * * * *

Q. Of your own knowledge, is there any engineering difficulty which prevents a hook up between that coaxial cable and Radio Station WBTV? A. No.

314 Q. Are you familiar with the necessary procedures to effect a hook up of such a coaxial cable? A. Well, first you have to ask or sign a contract with the AT & T for service, application for it, I imagine.

Q. With your general knowledge, how long would it take to effect service, once an application was made? A. Thirty to sixty days.

Q. Of your own knowledge, is there any transmission over this coaxial cable? A. Down as far as Richmond, Virginia.

Q. Of your own knowledge, do you know why there is no transmission south of Richmond? A. Well, I would say there is no transmission south because they have no orders for the programs or no contracts signed for the furnishing of those programs south of Richmond.

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315 Q. Are you familiar with what has been marked for identification General Counsel's Exhibit 10-D? A. Yes.

Q. Do you recall distributing that? A. Me?

Q. Yes. A. No, I didn't distribute it.

Q. Why didn't you? A. I was out of town the day it was distributed.

Q. Where were you? A. In Washington, D.C.

316 Q. When did you go to Washington, do you recall? A. I left here on Wednesday morning, August 23 or 24, I believe it was 24.

Q. When did you return? A. Saturday morning, about three a.m., August 27th.

Q. Would you mind telling the Examiner why you went to Washington? A. Mr. Crutchfield was up there for a conference and I wanted to be on hand in case Mr. Wimberly needed me for any questioning.

Q. Mr. Wimberly, is Vice-President in charge of operations of the radio operations of IBEW? A. Mr. Wimberly's correct title I believe is Assistant to the President of the International Brotherhood of Electrical Workers.

Q. Did the company at any time inquire of you whether you distributed the leaflet, asking whether WBT management considered that Charlotte might be a second class city? A. No, they didn't

Q. Before they fired you? A. No.

. . . . . .

317 Cross Examination

Q. (By Mr. Blakeney)

. . . . . .

331 Q. You say that there has been no obstruction to WBT getting television programs off of that coaxial cable, if it just would go down there and ask for it and pay the necessary money, they could have at any time since 1947, is that right? A. The information that I have on the subject is that—

Q. Is that your information? A. Sir?

Q. Is your information what I have just stated? A. No, I want to say what the information is.

Q. Go ahead. A. The information I have on it is that shortly after that coaxial cable was terminated in Char-

lotte, that television programs could have been transmitted over it, upon proper application for the programs and from maybe sixty days after it was installed.

Q. All right, from sixty days after the time it was installed, in 1947, programs from that coaxial cable have been available to WBT? A. I didn't say they have been available.

Q. If WBT would apply for them and pay the
332 money to get them and get the equipment necessary to take them, is that right? A. That is the information I have on it.

Q. Is that your information? Where did you get that information, Mr. Stroupe? A. From a friend.

Q. Who is that? I am not trying to pry into your personal friendships, but I mean, is he a man connected with the telephone company? A. Yes, American Telephone and Telegraph Company.

Q. What does he work at down there? A. He is on the staff of the American Telephone Company, in the—operates some of the equipment down there.

Q. Is he in a position to know whether what you have just stated is correct information? A. I believe he would be.

Q. Well now, what is his job? A. I can't answer that exactly.

Q. You don't know exactly what his job is. Is he part of the management or supervision down there? A. No, I don't believe he is.

Q. Well, would you have any objection to giving us his name so we can determine what his work or job is? A. Well, I believe I would; yes.

Q. Well, whether he knows or in a position to
333 know, you don't know, right? A. I believe he should know.

Q. Well, then, we would like to have his name so we can check up and see if he does know. A. Well, I am not going to give you his name.

Q. When did he tell you that? A. Last night.

Q. Last night and says that it has been available under the circumstances I have just stated ever since 1947? A. Not you stated, I stated.

Q. Under the circumstances you stated, ever since 1947? How did he say he knew that? A. He didn't tell me how he knew it.

Q. Did you inquire into whether or not he was giving you authentic information? A. Well, he is a respectable citizen and I believe his integrity and his word.

Q. But he might have thought that without knowing, mighten be? A. I say he could have, yes.

Q. At any rate, you had no information leading you to the conclusion that these coaxial programs were available until last night, is that right? A. Until last night?

Q. Yes, you had no information leading you to that
334 view or opinion? A. No, I have known it before, but I just checked on it last night to get the definite dates.

Q. How did you know it before? A. Well, I have talked with some of the telephone men before and also I know this fact, that the "coax" cable, I believe there are four or five "coax" cables in the one cable, and since they did not have any application for television programs down here, they used them for telephone circuits.

Q. You say you knew before that the programs off of this coaxial cable were available at WBT within sixty days after application, if WBT would pay for them? A. I said possibly sixty days, I believe.

Q. Well, approximately sixty days? A. Approximately sixty days.

Q. How long now you say you have been knowing that before last night? A. I didn't say I knew that.

Q. How long? A. That particular question before last night, but I have known that television programs were available over the "coax" cable because that was what the "coax" cable was put in for.

Q. Well the question I am asking you is this: Now how long have you known that WBT could go down to the American Telephone here in Charlotte and upon making application and paying the necessary money, get "coax" programs within approximately sixty days? How long have you been knowing that? A. Oh, my understanding, last summer they could have gotten them if they wanted them then.

Q. How did you have that understanding? A. From one of the telephone men.

Q. The same man who talked to you last night? A. No, this is a different one. I don't remember the particular one right now.

Q. You don't remember the man who gave you that understanding last summer? A. No.

Q. Do you know where he worked? A. In the telephone office, Caldwell Street.

Q. He worked in the office? A. No, I mean the building —just say the building.

Q. Do you know what his job was? A. No, not particularly.

Q. Are you willing to tell us his name? A. No.

. . . . . .

Q. Don't you know to get that into operation would cost in the neighborhood of $100,000.00? A. I didn't say what it would cost.

Q. Well, you wouldn't deny it would cost that, would you? A. Yes, I would.

Q. All right, what would it cost? A. Well, one field camera is $12,975.00, field camera with chain. Microwave relay unit, transmitter and receiver is $10,100.00; mobile unit is $9,500.00. Now I believe that covers everything that would be necessary to transmit a program in the field, that is $12,900; $10,000, that would be twenty-two thousand—between thirty and thirty-five thousand dollars to do it, you could put a live picture on here.

Q. That would be in a very rudimentary sort of way? A.

Well, that is the way some of the stations operate, I understand.

Q. That would be just one camera? A. That's right.

Q. I thought you had two in there a while ago, didn't you? A. No, I just mentioned the price of either one of them, studio or a field camera chain.

Q. Now do you know of any station that just picks them up with one camera? Is that feasible? A. I understand Greensboro just has one camera.

Q. What did you say? A. Greensboro station
341 just had one studio camera.

Q. Do they pick up baseball and football programs? A. No, I didn't say they picked up that. I said one studio camera.

Q. I thought you were telling us what it would cost us to get these baseball and football live programs on the air? A. I said it could be done with that.

Q. Have you ever heard of any station doing any except with additional equipment beyond what you mentioned? Don't they all use more equipment than what you mentioned? A. Well, two cameras would be considered minimum.

Q. Would be what? A. Would be considered minimum equipment.

Q. Yes, and that would be more than what you have enumerated, wouldn't it? A. Yes, that would be between forty and fifty thousand.

Q. In addition to that, you have to have the personnel to tend to it, haven't you? A. Sure.

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343 Redirect Examination

Q. (By Mr. McCormick)

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Q. (By Mr. McCormick) In questioning you, I asked you if WBTV had equipment to pick-up a baseball game in

Raleigh. I now ask you, does WBTV have the equipment to pick up a ballgame in Charlotte? A. They didn't when we were discharged.

. . . . . .

344 Recross Examination

Q. (By Mr. Blakeney)

. . . . . .

Q. Mr. Stroupe, I show you here a paper writing which has been marked for identification Respondent's Exhibit 3 and ask you if it bears your signature? A. No, I don't believe that is my signature.

. . . . . .

345 A. Wait a minute, I wrote a number of these things and that possibly could be my signature, I wrote them so fast.

Q. Well, take your time to look at that and see if that is the one you wrote?

Trial Examiner Martin: You mean the letter or the signature?

Mr. Blakeney: The letter.

The Witness: Mr. Thompson wrote that letter, I mean the contents of it.

Q. And Mr. Thompson is International Representative of the union? A. That's right.

Q. You did sign it as president of the local union? A. Yes, if that is not my signature, I agreed to sign it as president.

Q. At any rate, a letter dated August 22, on the letterhead of International Brotherhood of Electrical Workers, Radio Broadcast Technicians, Local Union No. 1229, Charlotte, N. C., Winston-Salem, N. C. Headquarters, Post Office Box 688, Charlotte, addressed "Dear Fellow Employees", dated August 22, 1949, of which this is a true copy, you did sign? A. Yes.

. . . . . .

347 Q. Mr. Stroupe, did you, calling your attention there to the last two sentences of the second paragraph, did you write in that letter which you have just described the following: "Not only this, but the organization has plans to apply more pressure than has been used
348 to date. We are forced to use stronger means due to the underhand methods the company is now employing." You did write that, didn't you? A. Underhanded methods.

Q. Yes, underhanded. A. Yes.

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354 Mr. McCormick: We will stipulate that everything that the union did in concert following that declaration was done pursuant to the policy of the union expressed there, to exert greater pressure and stronger means upon the company.

Mr. Blakeney: Will you stipulate then that what
355 the union was referring to and did do constituted stronger means and more pressure than they had theretofore used?

Mr. McCormick: I haven't seen the letter and if I ever had an opportunity, I might be able to arrange it.

Mr. Blakeney: Second Paragraph.

Trial Examiner Martin: I don't think the record yet shows to whom the letter was addressed.

Mr. Blakeney: Fellow Employees.

Trial Examiner Martin: Does the record show that?

Mr. Blakeney: Yes. While you are looking at that, let me go along to save time.

Q. Now that letter, do you know when it was mailed, Mr. Stroupe? A. On or about August 22.

Trial Examiner Martin: To whom was it mailed?

The Witness: To all employees at WBT.

Q. To all employees at WBT? A. Except the discharged ones.

Q. That was August 22 that you said "we are going to put on more pressure and greater force". The next day

is when you had printed up the leaflet headed "Is Charlotte a Second Class City", wasn't it? A. August 22—yes, the 23rd.

Q. Now— A. I forgot about that end of it.

356 Q. Is that the greater pressure and the new means?

Mr. McCormick: We stipulate it is.

The Witness: I said yes, the handbills, a minute ago.

Trial Examiner Martin: You accept the stipulation?

Mr. Blakeney: Yes, sir.

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363 A. W. HINGLE

recalled as a witness by and on behalf of General Counsel, having been previously sworn, was examined and testified as follows:

Further Direct Examination

* * * * * * * * * * *

Q. (By Mr. Pickens) Mr. Hingle, I show you General Counsel's Exhibit No. 23 and ask you what that is? A. It is a placard that was carried by pickets in front of the Wilder Building.

* * * * * * * * * * *

371 Q. I show you General Counsel's Exhibit No. 31 and ask you what it is? A. It is a placard. It was carried by the pickets in front of the Wilder Building.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 31 for identification.)

Q. Before or after discharge? A. That was before discharge.

Mr. Pickens: Mr. Trial Examiner, it is stipulated

372 that the legend on the front side of this placard reads as follows: "Jefferson Standard Broadcasting Company Radio Station WBT unfair. Radio Technicians Local Union No. 1229, International Brotherhood of Electrical Workers (AF of L)."

It is further stipulated on the back of the sign that the wording is identical with the front.

Trial Examiner Martin: So stipulated?

Mr. Blakeney: Yes, sir.

Mr. Pickens: This placard also is approximately the same size as the others.

Q. I show you General Counsel's Exhibit 32 and ask you if you know what it is? A. It is a placard carried by pickets in front of the Wilder Building. It is the same as the last.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 32 for identification.)

Mr. Pickens: Mr. Trial Examiner, it is stipulated the same legend appears on this which appears on General Counsel's Exhibit No. 31.

Q. I show you General Counsel's Exhibit No. 33 and ask you if you know what it is? A. It is a placard carried by the pickets in front of the Wilder Building.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 33 for identification.)

373 Q. At what period? A. It was carried before.

Q. Before discharge? A. Before discharge.

Q. Do you have any idea how long before discharge? A. It was not long before the discharge.

Q. By "not long" you mean what? A. A matter of a few weeks.

Trial Examiner Martin: How about 31 and 32, with reference to how long before discharge?

The Witness: I think they might have been just prior to the discharge.

Trial Examiner Martin: That is 32?

The Witness: I can't be sure on that one.

Trial Examiner Martin: Are you any surer about 31?

The Witness: No, I am not any surer about 31.

Mr. Pickens: Mr. Trial Examiner, it is stipulated that General Counsel's Exhibit No. 33 reads as follows:

"Unfair Jefferson Standard Broadcasting Company,

Charles Crutchfield, Vice-President, to Radio Broadcast Techniciana, Local Union No. 1229 IBEW AF of L. We are not on strike."

It is further stipulated, Mr. Trial Examiner, on the back of that is a legend reading as follows:

"WBT desires to discharge us for any reason they see fit. Further, they refuse to arbitrate the fairness of
374 such action. Do you consider this fair? We don't either. IBEW LU 1229."

It is further stipulated this sign is about the same size as the others.

Trial Examiner Martin: So stipulated? —

Mr. Blakeney: Yes.

Q. I show you General Counsel's Exhibit No. 34 and ask you what it is? A. It is a placard carried by pickets of Local Union 1229 in front of the Wilder Building.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 34 for identification.)

Q. Could you give me the approximate time or times during which it was carried? A. It seems that we carried this placard on—soon after the picket line was established.

Q. That would be sometime when, would you say? A. In July I should say.

Q. The picket line was established on July 9th? A. Yes.

Q. About what period in July would you say? A. Well, it would be early. We wished to inform the public that we were not on strike.

Mr. Pickens: Mr. Trial Examiner, it is stipulated that the legend on this placard reads as follows: At the top, in red letters of approximately two and a half inches
375 high, "We are not on strike", followed by black lettering in about half of that size, "We do not desire to interrupt your favorite radio program or delay television in Charlotte due to our dispute with the management of Radio Station WBT. IBEW LU 1229."

It is further stipulated that on the back of that placard at the top, "We are not on strike. We have offered to ac-

cept the same agreement we had last year. WBT has refused this offer and will not arbitrate the question. We welcome your support in our fight for fairness at WBT. IBEW LU 1229."

It is further stipulated that this sign is approximately the same size as the others.

Mr. Blakeney: Yes, sir.

Trial Examiner Martin: So stipulated?

Mr. Blakeney: Yes.

Q. I show you General Counsel's Exhibit No. 35 and ask you if you know what it is? A. It is a placard carried by picket in front of the Wilder Building in Charlotte.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 35 for identification.)

Q. Could you fix the approximate time it was carried? A. Well, I would say sometime in July.

Mr. Pickens: Mr. Trial Examiner, it is stipulated that the legend on this placard states as follows:

"Unfair. Jefferson Standard Broadcasting Com-
376 pany, Charles Crutchfield Vice-President to Radio Broadcast Technicians, Local Union 1229, IBEW AF of L."

And on the back, that the legend states as follows: "WBT desires to discharge us for any reason they see fit. Further, they refuse to arbitrate the fairness of such action. Do you consider this fair? We don't either. IBEW LU 1229."

Trial Examiner Martin: So stipulated?

Mr. Blakeney: Yes.

Q. I show you General Counsel's Exhibit No. 36 and ask you what it is? A. It is a placard carried by pickets in front of the Wilder Building in Charlotte and the time—this was carried in July.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 36 for identification.)

Q. Of what year was that? A. Of 1949.

Q. Early or latter part? A. Well, there were a lot of these that were carried over through several months and

some of these might have started in July and were carried over probably in August.

Mr. Pickens: Mr. Trial Examiner, it is stipulated that the legend on this placard states as follows:

"We are not on strike. We do not desire to interrupt your favorite radio program or delay television in Charlotte due to our dispute with the management of
377 Radio Station WBT. IBEW LU 1229."

It is further stipulated, Mr. Trial Examiner, that on the back the legend states as follows:

"We are not on strike. We have offered to accept the same agreement we had last year. WBT has refused this offer and will not arbitrate the question. We welcome your support in our fight for fairness at WBT."

This placard was also approximately the same size as the others.

Trial Examiner Martin: So stipulated?

Mr. Blakeney: Yes, sir.

Q. I show you General Counsel's Exhibit No. 37 and ask you if you know what it is? A. It is a placard that was carried by pickets in front of the Wilder Building in Charlotte.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 37 for identification.)

Q. Could you fix the approximate time it was carried? A. This is the same as one of the others, isn't it? The one we had before? This is an early one.

Q. This is an early one? A. Fairly early. I don't know whether it was at the time the picket line started or immediately after.

Trial Examiner Martin: Why don't you take a minute to check?

378 Mr. Pickens: Well, part of the legend is but the title is not.

Mr. Trial Examiner, it is stipulated that the legend on the front of this placard is as follows:

"We are not on strike. We do not desire to interrupt

your favorite radio program or delay television in Charlotte due to our dispute with the management of Radio Station WBT. IBEW LU 1229."

It is further stipulated that on the back the legend is as follows:

"We are not on strike." It is the same. The back is identical with the front.

Trial Examiner Martin: So stipulated?

Mr. Blakeney: Yes.

Trial Examiner Martin: When did you say that was carried?

The Witness: It was carried—it was either the original ones or the very early ones, at the beginning of the picket line in July.

* * * * * * * * * *

380 Cross Examination

Q. (By Mr. Blakeney) Mr. Hingle, some of the placards that you have just been identifying here, carried by pickets, commencing July 9, every day through July and every day through August, except Sundays—they were carried every day except Sundays, is that correct? A. Except Sundays?

Q. Yes. A. There were some other exceptions, the weather.

Q. Except in inclement weather? A. Yes.

* * * * * * * * * *

383 GEORGE B. PATTERSON, JR.

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * * * * * * * *

Direct Examination

Q. (By Mr. McCormick) Mr. Patterson, did you ever work for the broadcasting company called Jefferson Standard Broadcasting Company? A. I did.

* * * * * * * * * *

390 Q. I show you what has been marked for identification General Counsel's Exhibit 10-D, which is a leaflet. Did you ever distribute that leaflet? A. I did.

Q. Did the company ever ask you if you distributed this leaflet? A. No, I didn't think it was necessary. I gave Mr. Minor one of the first ones I gave out.

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419 GEORGE B. PATTERSON

recalled as a witness by and on behalf of General Counsel, having been previously sworn, was examined and testified as follows:

Further Recross Examination

Q. (By Mr. Blakeney)

* * * * * * * * * *

421 Mr. McCormick: At this time I would like to read into the record a statement which counsel and I have agreed to this morning, with respect to commerce operations of this company.

Counsel for the Respondent and counsel for the General Counsel stipulate that the company, Jefferson Stand-

422 ard Broadcasting Company, is a North Carolina corporation, having its principal office and place of business in Charlotte, North Carolina. It owns and operates a radio station having the call letters WBT, and under license from the Federal Communications Commission.

The company operates on a frequency of 1100 kilocycles with a power output of 50,000 watts.

The company receives network programs from the Columbia Broadcasting Company. In excess of 50% of the company's programs originate in Charlotte, North Carolina. Substantially less than 50% of the company's programs are received from national network above referred to.

The network programs are piped in over a leased wire. National network programs are generally sponsored by

products sold nation wide. Such network programs generally originate in New York, Hollywood or Chicago.

Local programs broadcasted by the company consist in part by transcripts or recordings received by mail from points and places outside the state of North Carolina. These constitute less than 1% of the total volume of the company's broadcasts.

Local programs broadcasted also include recorded commercials sent to the company from points outside the state of North Carolina. These account for approximately five to six per cent of the volume of the company broadcasts.

The annual gross revenue of the company from its
423 broadcasting operations is in excess of $100,000.00.

Of this amount, less than 20% is derived from network broadcasts referred to above and in excess of 60% is derived from broadcasts originating through the company's own facilities.

The company's main transmitter is an AM transmitter, located a few miles from the City of Charlotte. The company also has a booster or satellite station located near Shelby, North Carolina.

The company likewise owns and operates a FM transmitter at Spencer Mountain, North Carolina, near Gastonia,
6 North Carolina.

The company receives news items from the Associated Press and the United Press, which are broadcast over the company's station at Charlotte.

The amount of time spent in such broadcast is approximately 45 minutes per day.

As I understand it, that is in addition to the admissions contained in the answer of the respondent.

Trial Examiner Martin: May that be so stipulated, Mr. Blakeney?

Mr. Blakeney: Yes, sir.

. . . . . .

450 CHARLES H. CRUTCHFIELD

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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451 Direct Examination

Q. (By Mr. Blakeney) Mr. Crutchfield, you are connected with the Jefferson Standard Broadcasting Company? A. Yes, sir.

Q. What is your position? A. Vice-president and General Manager.

Q. How long have you been connected with Jefferson Standard Broadcasting Company? A. Eighteen years.

Q. Now there was some picketing that began at Jefferson Standard Broadcasting Company's studios or in front of the Wilder Building, the evidence has here indicated, on or about July 9 or 8, is that correct? A. To the best of my knowledge, it was early in July.

Q. That picketing began, it has been testified, after bargaining between the company and the IBEW had failed to result in a contract, is that correct? A. Yes, sir.

Q. Now that bargaining for a contract had commenced about when? A. We started negotiations as well as

452 I recall, the latter part of December, 1948, sometime between Christmas and New Year, about the 27th or 28th, I would say.

Q. And that bargaining went on approximately how long during that series of negotiation? A. Well, the first series lasted intermittently for the month of January. We were in constant session, I think for about the first seven or eight days and then we had several additional conferences up until the early part of July.

Q. Now the series of conferences that you say went on up until the end of January, when did the contract that was in effect run out? A. January 31, at midnight.

Q. Of 1949? A. Yes, sir.

* * * * * * * * * * *

453 Q. Now as of January 31, '49, you say the bargaining was suspended or broken off? A. Yes, sir.

Q. Under what circumstances was it suspended or broken off? A. Well, the company and the union, as I recall, agreed mutually to suspend negotiations until one or the other notified the other of the desire to resume the negotiations.

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454 Q. Well, were there some further negotiations in June and July? A. Yes, sir.

Q. When did those negotiations come to an end or suspended state? A. About July 6 or 7, I believe—possibly the 5th. I believe it was on Saturday.

Q. But anyway, what were the matters unresolved
455 at that time when the negotiations came to an end then? A. The same problems that we had during the entire negotiation, the same primary problem, and the union did, however, lead us to believe during that negotiation that we could reach agreement on salaries, provided we would accept their demands for the discharge clause. Indications were that if we would accept their discharge clause, they would withdraw their demands for wage increases.

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459 Q. Going on down to the latter part of August, do you remember whether or not you were in Charlotte on or about Wednesday, August 24? A. No, I was in New York, the Sunday night prior to that, which would be —arrived there the 19th and was in New York until Friday.

Q. Have you recalled anything that occurred that fixed Wednesday, August 24 in your mind relative to the picketing in Charlotte at the Wilder Building or in connection with the picketing in any way? A. Not with the picketing. I remember Mr. Walker called me. Mr. Walker was in charge while I was away. He called me around ten-thirty or eleven, in New York, and told me some handbills were being handed out on the street which were libelous,

460 derogatory and detrimental. I asked him to read me the handbill, which he did. It was the one labeled, "Is Charlotte a Second Rate City—Second Class City."

I asked him who was distributing the handbills. He told me the boys on the street. I told him to airmail me a copy of one and in the meantime, to get the names of all the people who distributed such handbills, the times and dates that they were distributed.

Q. Did he tell you anything as to the extent to which that handbill was attracting attention or of notoriety in the town? A. He told me that he was already getting calls from television distributors, television dealers, that quite a number of our staff, people had come to his office with the handbills on Wednesday morning, prior to his call to me, and that the atmosphere was pretty bad around the radio station and around the town about the handbill.

Q. I show you what has been introduced in evidence as General Counsel's Exhibit No. 10-D and ask you if that is the handbill that you are now talking about? A. Yes, sir, that is it.

Q. Now what is the next thing that you said or did in regard to that handbill? Where did you go from New York? A. I went to Washington to see Mr. Wimberly, who as I understand it, is the Executive Head of the Radio Division of IBEW.

Q. Do you remember which day you saw him? A.
461 I saw him on Friday.

Q. Did you tell him about this handbill? A. Yes, sir.

Q. Now did you come on back to Charlotte? A. I left Washington I believe—I think I got back to Charlotte on Saturday night.

Q. Did you go up to the studios in the Wilder Building on Monday? A. Yes, sir.

Q. All right, go ahead and describe to the Examiner and for the record all the events and developments from that point on. A. Well, as I went to the studio, I went in the

entrance of the lunch store there, the soda shop, and I noticed the boys on the picket line and one person whom I didn't know handing out these second rate handbills. They did not hand me one, but I stopped at the door, say long enough to read the headline on the bill and saw that they were handing them out.

Q. Did you go on to your office? A. Yes, sir.

Q. Did you accumulate any other facts or information in regard to this handbill or the handing out thereof? A. In the morning mail I received quite a few of them from friends and from dealers and distributors. I was called constantly by the same group of people about them.

Q. "By the same group", what do you mean? A.
462 Distributors, dealers, business people in Charlotte.

Q. What else, if anything, came to your attention in regard to the handbill during that day? Did you obtain any reports from your staff or management in connection with them? A. Well, practically all of the staff people—not all of them, I would say 80% of them were in my office or had sent me copies of handbills that had been handed to them, many of them containing the names of the person who handed them the bill and the time and date, in writing, on the back of the bill itself.

Q. Now on that date, I will ask you whether a paper writing which has been marked for identification Respondent's Exhibit 2, whether on or about that day this came to your attention? A. Yes, sir. Mr. Minor brought this letter to my office about noon on Monday, that same Monday.

Q. Now as a result of all that you had seen and learned up to that time, what if any conclusion did you come to? A. I decided on Monday that the only action for me to take would be to discharge the men in our employ, the men on our payroll who deliberately tried to run a new business which we had just started at enormous expense and a business which we had great hopes for.

Q. Did you discharge them that day? A. No, sir.

Q. When did you discharge them? A. We dis-
463 charged them—we decided definitely not until Saturday that the discharge notices would be sent.

Q. What were you doing in regard to the matter between Monday and Saturday? How was it you didn't discharge them on Monday? A. Well, I wanted to talk first with Mr. Walker, and some of my other associates in the company, both in the executive end of the business, as well as in the so-called employment category. I wanted to get reactions from them. I wanted to consult with other associates, including the president of my company. I wanted to talk with our attorneys.

Q. Did you do all those things? A. Yes, sir.

Q. Between Monday and Saturday? A. Yes, sir.

Q. Then on Saturday what did you do? A. On Saturday I finally reached Mr. Bryan, who had been either in California or enroute from California and told him of the handbill, told him all the details in connection with it and he agreed with me completely that my plan of action was the only course to follow.

Q. Then what—

Trial Examiner Martin: Excuse me, what is Mr. Bryan's job?

The Witness: He is president of Jefferson Stand-
464 ard Broadcasting Company.

Trial Examiner Martin: What is his first name?

The Witness: Joseph M. Bryan.

Trial Examiner Martin: What is Mr. Walker's name?

The Witness: Larry Walker.

Trial Examiner Martin: What is his regular job?

The Witness: He is Assistant Manager and Secretary-Treasurer of the Company.

Q. Then what steps did you take? A. It was about three o'clock when I finally reached Mr. Bryan in Greensboro. I had reached him prior to that in California, but he was preparing an address at that time and had only about two minutes to discuss the matter with me. He was, however,

vaguely familiar with what was going on at the time I finally contacted him in Greensboro on Saturday. I asked Mr. Walker to come in and our attorneys, Mr. Spicer, our accountant.

I dictated letters to each of the ten men whom we or others had seen distributing the handbill. I asked Mr. Spicer to draw up severance checks of two weeks each, severance pay for the men in question; also to draw up checks for vacation money due to some of these ten men who had not received any or a part of their vacation.

Q. About what time was it when you got all that done?

465 A. We finished writing up the letters and drawing up the checks, it was about ten-thirty or eleven o'clock Saturday night.

Q. Did you go ahead and send out the letters of discharge at that time with the checks? A. Yes, sir.

Q. Why did you do it at that time in the night? A. Well, our week ends at midnight on Saturday. This was on Saturday. Our week ends. Our pay week. It seemed the opportune time to do it. Our shifts were changing, the midnight shift, they changed at midnight, new men were coming on; men who had been on were going off. It seemed to be the appropriate time for discharge.

Q. Now up to that time had you discussed and obtained information in detail as to which individuals had distributed the handbill? A. Yes, sir, we had.

. . . . . .

466 Q. Did you know who the officers of the union were, who the president was? A. Yes. Yes, sir.

Q. Did you know what Mr. Stroupe's job with the union was? A. I knew he was president of the union; yes.

Q. Did you know what Mr. Hicks's job was with them? A. Yes, sir.

Q. What was his job or connection? A. Mr. Hicks was business manager of the Local.

Q. Had you obtained at the time you made these decisions and wrote these discharge letters, had you obtained infor-

mation as to any statements made by the men handing out the handbills at the time they handed them out? A. Yes, sir, I had.

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467 Q. Now what information had you obtained as to statements made by the men handing out the handbills at the time they did hand them out? A. Do you wish me to give names of the people who made the statements or give it in general terms?

Q. Well, you can go ahead and give the names insofar as you may now remember them, but what I am asking for is what the statements were as reported to you? A. Well, one of them was in answer to a comment made by the recipient of the handbill. The boys said, "You may think this is bad, but we've just started. This is the beginning." Another statement was, "We will bankrupt that company before we are through." These statements all being made by employees of ours.

Q. By individuals among the men? A. By individuals among the ten men who were discharged, yes.

Q. Do you recall offhand who they were? A. Mr.
468 Hicks made the statement about bankrupting the company and Mr. Perkins was one of the men who made the statement about worse to come.

Trial Examiner Martin: Who told you this?

The Witness: They are all on our official records. Mr. Walker was the first to inform me and then after I talked with witnessess, I had it confirmed.

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469 The Witness: Well only in the case of Mr. Perkins's statement did my information come through Mr. Walker. The other statement came from my barber, who was told by Mr. Hicks that he intended to bankrupt the company.

Q. Now did you obtain information as to where these handbills had been and were being handed out? A. Yes, sir, they were handed out on the Square at Trade and Tryon

Street intersection, on Saturday and possibly on Friday. They were handed out on the picket line, in front of the Wilder Building, from Wednesday the 24th through about 11:00 a.m. the following Monday, with the exception of Sunday.

Q. The following Monday? A. Yes.

Q. Do you recall those dates? A. I don't recall the dates. The two men I saw handing them out on Monday were Mr. Stroupe and Mr. Hilker, as I came into
470 the Wilder Building, Wednesday was the 24th, so that is the 25th, 26th, 27th and 29th were the days.

Q. Did you say whether you ever got one of them from one of the men who were handing them out? A. No, I did not.

Q. You say you did see two men handing them out? A. I saw Mr. Stroupe and Mr. Hilker handing them out and someone else who was not in our employ. I don't know who he was.

Q. I hand you a handbill marked for identification GC-10-D and ask you to state whether there is anything untrue in that handbill? A. Yes, sir.

Q. What is it? A. There is a statement here, "Did you know that all the programs presented over WBTV are on film"—that is untrue—"and may be from one day to five years old." That is untrue.

The next sentence, "There are no local programs presented by WBTV". That is untrue.

Q. Were those things untrue at that time? A. Yes, sir.

Q. Now what about the question in the headline, "Is Charlotte a Second-Class City?" and the statement, "You might think so from the kind of television programs being presented by the Jefferson Standard Broadcasting Company over WBTV.", and the statement on down, the
471 question mark on down, "Could it be that they consider Charlotte a second-class community and only entitled to the pictures now being presented to them?"

What, if anything, do you have to say as to the second-

class idea there set forth as of that time? A. Well, I have several things. Had we considered Charlotte a second-class city, we certainly would not have invested over a half a million dollars in a comparatively new industry in Charlotte.

Q. Well, had you done that? A. Yes, sir.

Q. "In a comparatively new industry", state more specifically what it is you had invested this money in. I don't mean every item, state generally. A. We bought a mountain and we built a rather elaborate and expensive building on the mountain. We built a road up the mountain. We put over $100,000.00 in a tower on the mountain. We bought an enormous amount of equipment to put on the mountain, because people in Charlotte, as well as our own employees and our friends and customers were insisting that we get in the television business. We do not feel now that—

. . . . . .

472 The Witness: I am speaking that way, sir. I am speaking as of July 14, the date we started.

Mr. Blakeney: All right.

The Witness: The programs that we were putting on then—

Trial Examiner Martin: You started television then?

The Witness: July 14th, yes.

Trial Examiner Martin: It went on the air then?

The Witness: Yes, sir, and this attack came about five or six weeks later. Our programs consist mostly of kinescope recordings of the finest programs and consisted then of kinescope recordings of the best programs which the four available television networks had to offer.

In addition to the kinescope programs, we had the best film programs the industry had to offer, programs that were not kinescoped, but were made especially for television on film. Our operation was not nor is it now second rate.

Q. State with respect to the effort that your company was making in the television field, state what effect it was having upon your company financially? A. I have been

with the company for about eighteen years, nearly nineteen years and for the first time that I have had any
473 knowledge of our operation was in the red, the first four months of our television operation; that is our overall operation, television AM and FM was losing money at the time this attack was made.

Trial Examiner Martin: Do I understand your testimony to be that you consider that this condition of being in the red was due to the union's attack?

The Witness: We hope to prove, sir, that that was largely responsible for the lack of set sales in the area.

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Q. Can you give us the approximate amount you were laying out on all this? A. You mean in capital investment or operating cost?

Q. Both. A. Capital investment, in the neighborhood of a half million dollars at that time, operating budget was set up at $10,000.00 a month and we were losing closer to fifteen.

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474 Q. What programs are first class television results? A. We have programs on our station that are not only as good as——

Q. Wait a minute, had then. A. We had then, that were identically the same programs that were being broad-
475 cast in areas like New York, Chicago, Los Angeles, St. Louis. Our network programs were identical to theirs, except that ours were on kinescope recordings. Theirs were, in the section of Los Angeles, which was also "Kinney" on coaxial cable.

Q. Why didn't you get yours on coaxial cable? A. The coaxial cable for network programs will not be operative until September 1, according to the American Telephone & Telegraph Company.

Q. September 1 when? A. This year, 1950.

Q. Could you have got the coaxial cable programs if you had gone to the American Telephone Company at any time

in the summer of 1949 or any time in the year 1950 and made application for it and laid out any amount of money, could you have got it? A. We did exactly that, we went to Washington to the AT & T office and through their engineers, consultants, applied for it at that time. They said even though the cable is physically in the ground their terminal equipment and the booster equipment required for television transmission would not be allocated until 1950 for the link south of Richmond. Therefore, no programs would be available south of Richmond until 1950.

Q. Now Mr. Crutchfield, did you have any evidence about the time these men were discharged or thereafter as to the effect, if any, the leaflet you have been talking about
476 had upon television sales in this community? A. Yes, sir, I have talked with several distributors or rather they with me. One of them said that in the month of September following the distribution of this handbill, this second rate city handbill, in August, that in September their television set sales were 71% under the month of August, under that. That was one particular distributor. I talked with several others who had similar results.

. . . . . .

480 Q. Now as to that part of the sentence I have just read you, "that the local outlet is not utilizing the full facilities as granted in the license", what is the truth or untruth of that? A. We were, as a matter of fact, at that time operating more hours per day than the Commission required. The Commission only required three hours at night.

Q. How much were you operating? A. We were on the air with test pattern and multiscope end programing from twelve noon until 9:30 or 10:00 p.m. at that time, without interruption.

Q. Now coming back to the picketing matters for a moment. Did you or any other representative of management make any record or take any special notice of who was picketing up to the time of the distribution of this leaflet

10-D? A. We have a complete record of not only who was picketing but we have the names of each person who passed out the second rate city handbill.

Q. But now going back to July 8 or thereabouts, when the picketing began, up to the time of the passing out of the 10-D leaflet, did the company know anything about who was picketing up to the second rate handbill? A. Oh, I knew naturally, I knew all the fellows, most of them having worked there for many years. I didn't pay a great deal of attention to who was picketing or when they were
481 picketing, but I think I recognized them all as having picket signs.

Q. There has been some evidence here that in addition to the ten men who were later discharged, there were two others, a Mr. Sellars and a Mr. Hickland, who did some picketing after July 8. Did you ever happen to see them picketing? A. Oh, yes, I saw Sellars and Hickland. I saw Stroupe, Hicks. I didn't see all of the union men picketing. As a matter of fact, I don't know who was in the union, at that time.

Q. Well, there has been some evidence that of the number who were picketing to start out, later two of them, namely, Mr. Sellars and Mr. Hickland, quit picketing. Did you know they quit? A. No. I didn't have any information to that effect and hadn't noticed.

Q. So far as you know, did any representative of the management of the company know or bring to your attention that they had quit picketing? A. No, sir.

Q. So far as you knew, were they picketing right up to and including the time of the handing out of the second class handbill? A. We did not see Mr. Sellars or Mr. Hickland hand out the second rate city handbill. If they did, we didn't know it. But we saw the others.

Q. So far as you knew, were they still active in the
482 picketing up to that time? A. Oh, yes, because I had seen them on the picket line many times.

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485 Q. (By Mr. Blakeney) Mr. Crutchfield, has WBT got any contracts with labor unions today? A. Yes, sir.

Q. With whom, what labor unions? A. We have a contract for 1950 which was signed early this year with the American Federation of Labor Union, American Federation of Radio Artists Local. We have another contract with an AF of L. union which was also signed this year, the American Federation of Musicians. I am sorry, I don't recall that, the numbers of those locals.

Q. That is all right. How many years have you
486 been having contracts with those unions and the IBEW? A. Over ten years.

Q. Are your relations with the musicians union and the other union satisfactory? A. Yes, sir.

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508 Q. Take the TV stations in the large cities, like New York and Chicago, what do their TV programs consist of substantially? A. Well, largely it is the same program we have here, except ours is anywhere from a day to a week or possibly two weeks later.

Q. Is that because you can't get it off the coaxial
509 cable yet? A. That is because it is not on the cable yet and won't be until September 1, according to our information. Their local fare, their local programs consists of major league baseball games, street interviews, boxing, wrestling, things of that kind.

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519 W. D. THORNTON

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Blakeney) You are Mr. George Thornton? A. Yes, sir.

Q. You are a barber here in town? A. I was until August—I mean September 15, for twenty-two years.

Q. Where were you a barber? A. I barbered anywhere from Trade Street to South Tryon, about four different places.

Q. You are here under requirement of a subpoena? A. Yes, sir.

Q. Do you recall ever seeing a copy of this paper that I hand you here, which has been marked General Counsel's Exhibit 10-D? Do you ever recall seeing a copy of that? A. I remember seeing several of them, I couldn't say that I saw this particular one.

Q. I understand. Do you remember seeing one? A. Yes, sir, similar to that.

520 Q. That had the heading, "Is Charlotte a Second-Class City"? A. Yes, sir. In fact, I think I have it at the house.

Q. Well now, what were the circumstances under which you recall first seeing it? A. The first time I saw it, Mr. Hicks was in the barber shop to get a hair cut.

Q. Is that Mr. Sterling Hicks? A. Yes, sir. It was discussed in the shop a day of two before that and he asked me if I had seen one. I told him I had not, and he reached in his pocket and gave me one.

Q. Do you recall what day of the week this was? A. It was either on Saturday or Monday.

Q. Do you say that this particular leaflet had been the subject of discussion there? A. Yes, sir, because of the essence that it had in it.

Q. Well, who had been discussing it in the barber shop? A. Just the general public.

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522 Q. Did you ever bring it to the attention of Mr. Crutchfield or anybody connected with the company that this had been given to you and had been the subject of general discussion in your barber shop? A. Not for a good long time, because Mr. Crutchfield was out of town.

The next time he came in town and I cut his hair, I did, not because of the pamphlet being handed to me, but because it was discussed.

Q. What had been the general nature of the dis-
523 cussions going on which you called to Mr. Crutchfield's attention? A. The way people was talking about it as a second rate television outfit and city.

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526 ROBERT D. McCALLUM

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Blakeney) Your name is Mr. Robert McCallum? A. That is correct.

Q. You live in Charlotte? A. Yes, sir.

Q. What do you do? A. Radio repair business.

Q. You are here under requirement of a subpoena? A. Yes, sir.

Q. Do you ever recall seeing this paper which has been received here as Exhibit 10-D, headed, "Is Charlotte a Second-Class City", a copy of it? A. Yes, a copy similar to that, I did.

Q. Where do you recall first seeing it? A. I was handed a copy on Tryon Street in front of the Wilder Building, thereabouts, and then I received one through the mail similar to that several days later.

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527 Q. Have you ever discussed that leaflet or heard it discussed among other radio men or other sellers and distributors of radios? A. I would say hun-
528 dreds of times.

Q. Here in Charlotte? A. Here in Charlotte.

Q. What was the interest in the discussion of that leaflet among radio distributors and repair folks? A. Well, the

thing asked—the question that was raised, whether or not Charlotte was a second class city, and the fact that the station would have you to think so.

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529 A. F. LIVELY

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Blakeney) Mr. Lively, you live here in Charlotte? A. Yes, sir.

Q. What business are you in? A. With the General Electric Company.

Q. You have been here some years? A. Since 1936.

530 Q. Are you here under requirement of subpoena? A. I was requested to be here.

Q. Well now, do you recall getting one of those leaflets, a copy of which you will see right there on the desk in front of you, headed, "Is Charlotte a Second-Class City"?

Trial Examiner Martin: I will hand him a copy.

Mr. Blakeney: Thank you.

The Witness: I did receive one of these.

Q. Where? A. On Tryon Street.

Q. Whereabouts on Tryon? A. On this side of the street between Fourth and Trade Streets.

Q. Between Trade and Fourth, on this side. You mean the west side of Tryon Street? A. That's right.

Q. Do you recall what day of the week it was? A. As I remember, if I remember correctly, it was on a Saturday morning.

Q. Where was it being handed out, right on the sidewalk? A. I was walking from Fourth to Trade and I would say in approximately the center of the block some young fellow approached and handed it to me.

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531 L. J. BISHOP

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Blakeney) Mr. Bishop, you live here in Charlotte? A. Yes, sir.

Q. And you are here under subpoena? A. Yes, sir.

Q. Do you recall ever seeing one of those leaflets, copy of which you will see there before you, headed "Is Charlotte a Second-Class City"? A. Yes, sir.

Q. Do you recall where you were when you got the
532 copy that you saw? A. I was in a restaurant on Trade Street.

Q. Here in Charlotte? A. Yes, sir.

Q. Do you recall what day of the week it was? A. To the best of my memory, it was on Saturday.

Q. Did the person or party who was giving them out give out others in the restaurant? A. Yes, he did, passed them right down the line.

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CHARLES H. CRUTCHFIELD

recalled as a witness by and on behalf of the Respondent, having been previously sworn, was examined and testified as follows:

Cross Examination

Q. (By Mr. McCormick) Mr. Crutchfield, you have testified you went to New York sometime or other, didn't you? A. Yes, sir.

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536 Q. Do you recall stating to Mr. Wimberly when he told you that he couldn't pay an organizer the salary that you were paying Mr. Hicks as a technician, do you recall saying to Mr. Wimberly, "You hire him and I'll

pay the rest, the difference"? A. I did. I said, "If you hire him and if it will clear up our problem in Charlotte, I will pay the difference. How much is it?" Mr. Thompson seemed to think that was the crux of our problem, a feud between Mr. Hicks and Mr. Carey.

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538 Q. How many technicians did you have employed on September 3, 1949? A. Quite a few.

Q. I want to know exactly how many, sir. A. I will have to check that.

Q. Well, perhaps I could help you. How many did you have in the control station, in the control room at 608 Wilder Building? A. I don't know.

Q. You don't know how many employees, technicians you had? A. This may sound facetous, but do you know how many there are in the Labor Board employment?

Mr. McCormick: I am asking you questions.

Trial Examiner Martin: Do the best you can to answer his question.

The Witness: I have no idea, sir. I don't mean to be funny, because I don't feel funny. I will find out. I will get it to you in the morning.

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541 Q. Have you ever had any requests since that time to meet with the union? A. Last Monday. No, it was not Monday. That was this week. I was down here. Last Friday of last week, Mr. Walker called me and said that the union, Mr. Adair, had requested to reopen negotiations and I told Mr. Walker at that time to inform Mr. Adair that I was still at home, under doctor's care, although I had come uptown a day later to the doctor, but that I had been in bed for about a month and I didn't feel like talking any station business now, but as soon as I was up and able, I would be glad to discuss the matter with the other officials in the company and then give Mr. Adair and the union a definite answer as to their question.

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542 Q. Why did you fire them? A. Because they, while in our employment, did something in distributing that second rate handbill and writing to the Commission asking them to revoke our license, that made us feel not only justified in firing them, but compelled to fire them, as any other company would do.

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543 (The document heretofore marked Respondent's Exhibit No. 2 for identification was received in evidence.)

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547 Q. Now you have testified here that there are certain untrue statements in this leaflet? A. Yes.

Q. Would you mind telling me again what is untrue? A. Oh, "Did you know that all the programs presented over WBTV are on film?". That is incorrect.

Q. Well now, will you tell the Examiner what kind of programs are not on film? A. On our afternoon programing we have about a total of two or two and a half hours a day, or had at that time, I think it is still on, of multiscope news programs, during which we broadcast or televised so that you could see it in your home with a receiver, last minute news, news that was anywhere from fifteen to thirty minutes old. That news was not on film. There was no film connected with the multiscope whatsoever.

In addition to that we had a program, a cartoon program on that was done by Dick Pitt, drawings that he himself drew, and were put on the television screen without the use of film. Dick did the commentary while the program

548 was on.

Q. What other part did you say was untrue? A. Well, you have to read it. "Did you know that all the programs presented over WBTV are on film and may be from one day to five years old". That is incorrect, on our news program.

Q. What is incorrect about that statement that the film

may be from one day to five years old? A. Because we use stuff that is five minutes old. We use pictures of the mayor that are made in the morning and we use them in the afternoon, in the evening. It is not one day to five years old.

Q. You have some film that is one day to five years? A. That says it is all.

Q. But you do have film that is one day to five years old? A. Yes, sir.

Q. What is the other? A. There are no local programs presented by WBTV. That is incorrect.

Q. Well, what local programs do you televise? A. The multiscope program is strictly local. It takes hours of preparation. It takes two people all day to keep it going, to edit the news and have it flashed on the screen. Our Telenews program at 7:45 is—the last eight minutes of that is local, live, with an announcer and still pictures,
549 which aren't filmed, pictures of Charlotte happenings as well as happenings elsewhere. The first half is on film. The last half is this other thing. The whole thing is just misleading. It is not a question of what is right or wrong. It is the intent of it, isn't it?

. . . . . .

555 Q. Now you have testified that you knew who distributed these leaflets, Second-Class City. Now will you tell the Examiner how you found out about who distributed these leaflets? A. Mr. Walker called me on Wednesday, the 24th of August. I said, "This thing is awfully serious." I said, "These boys were doing protected
556 recognized union activity, but now they have turned into something else."

I had never paid a lot of attention who was picketing and who was not, but I asked Mr. Walker specifically to look out my window and to go on the street and check and find out exactly who was giving those out, when they gave them out and where they gave them out and that he did, from Wednesday through Monday, and he had the complete list of names. To be absolutely sure that he was right, we dug

up witnesses who also got them from people and we certainly didn't want to discharge anybody unjustly or who had not participated in this.

Q. Did you think to call these men and ask them if they had distributed the leaflet? A. No, that was not necessary, since we knew who had distributed the leaflet.

Mr. McCormick: I move to strike the answer.

Trial Examiner Martin: The answer may stand.

Q. But you didn't call any of them into your office and ask them, "Did you distribute this leaflet?" A. No. They weren't inclined to have many discussions with me right at that time. We just would speak on the street, that is about all.

Q. Did Mr. Walker see all of these men whom you discharged? A. No, he did not. I think there were two of them that he personally did not see, but others in our organization were also checking, at Mr. Walker's
557 request.

Q. Do you recall who it was saw these other two? A. Oh, there are any number of people; Mr. Minor saw some of them; I saw two, as I have stated this morning. Some of the other witnesses that we will have in will testify when and where they saw them and some of the other people at the radio station.

Mr. Blakeney: As I understand, you admitted they all gave them out but two or three.

Q. You have testified here that Mr. Walker called you on the 24th? A. Wednesday. It was on a Wednesday. I think it was—you can check that. I am under the impression it was the 24th of August.

Mr. McCormick: Could I look at your calendar please?

Trial Examiner Martin: Yes.

Mr. McCormick: Wednesday is the 24th of August.

Q. You know that Mr. Walker told you about this leaflet's distribution in that telephone conversation? A. Yes, sir, he read it to me.

Q. Did he say where he got it? A. I believe Mr. Coving-

ton, one of our people at the station or somebody was handed the leaflet on the street.

Q. It has been testified here that these leaflets were not distributed until the 26th. Are you sure that you knew about them on the 24th? A. Yes, sir.

558 Q. And you took a week to make up your mind to fire the people? A. No.

Mr. Blakeney: I object. He didn't say that.

Q. When did you make up your mind to fire them?

Trial Examiner Martin: Overruled.

The Witness: On Monday afternoon, after I got home.

Q. You got home on the 29th, is that correct? A. I believe that's right.

Q. What is a multiscope? A. Well, it is—not being an expert, I am sure my explanation won't be satisfactory, but a multiscope is a box and it has got some five or six lenses on the front. It has got some lights on it. It has got some gadgets on the back that control shutters. You point this thing at a television tube and it shows pictures, still pictures, news, anything you want to put in it. It will show—it could possibly even show film, but we have never used any film on ours.

Q. But it does show pictures, does it? A. Yes.

Q. You have testified that you have put stuff on the air fifteen minutes after it happened, correct? A. Oh, we run news within fifteen minutes after it happens, yes.

559 Q. How long does it take to prepare one of these newscasts that you are talking about? A. Well, for regular newscasts where there is no particular importance to the time element, it will take anywhere—for a fifteen minute newscast it will take anywhere from half an hour to two hours to prepare it. For important news, emergency things of that kind, we can have it on the air in a matter of fifteen, twenty seconds.

Q. Do you mind telling the Examiner why you put this ad in Broadcast for technicians? A. I put it in there

because I was scared to death that we were going to wake up some morning without any operators.

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564 Q. Did you ever have any thoughts in your mind as to why those men were out there? A. Oh, of course, I knew that we were in disagreement on that clause. That is why they started picketing.

565 Q. That is why they handed this leaflet out? A. That is not picketing. I didn't object to them picketing. They handed that out all over town, mailed it to people, handed it out in restaurants, had children pass it out for them.

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Q. They handed it out to bring pressure on you to make you arbitrate? A. They handed it out to break our business and knock 100 other people out of work. That is what they did. We have more than ten people in our employ.

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571 Trial Examiner Martin: The hearing will be in order. The parties have some stipulations to enter into the record. You may proceed, gentlemen.

Mr. Blakeney:

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572 Now, therefore, it is hereby agreed and stipulated as follows:

That the leaflet headed, "Is Charlotte a Second-Class City" heretofore accepted in evidence as General Counsel's Exhibit No. 10-D, was distributed by such of the persons as it may otherwise be shown in this case did so, on August 24, 25, 26, 27, 29, 30, 31 and the first and second of September, 1949:

And, secondly, that the individuals who were discharged by the company did agree among themselves and did make plans at or about said period of time that they intended to and were going to exert more pressure upon the respondent company of the same type and sort and substantially

in the same manner as General Counsel's Exhibit 10-D.

Trial Examiner Martin: Are the stipulations acceptable?

Mr. Blakeney: Yes, sir.

Mr. McCormick: Yes, under the following conditions: I am entering into this stipulation for the purposes of accelerating the proceedings. I do not thereby admit that these stipulations are what actually in fact happened, but only that I will agree that the case may be tried upon these facts and that under no circumstances do I admit
573 that my witnesses have testified to what is untrue.

Counsel for the respondent further agrees and stipulates in return that this stipulation of fact will not be used as evidence attacking the credibility of these witnesses who have testified to contrary facts to this.

Mr. Blakeney: I agree to the stipulation as a stipulation of fact. I further agree that I do not desire the stipulation or intend to use the stipulation for the purpose of attacking the credibility of any of the General Counsel's witnesses.

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574 CHARLES H. CRUTCHFIELD

recalled as a witness by and on behalf of the Respondent, having been previously sworn, was examined and testifed as follows:

Further Cross Examination

Q. (By Mr. McCormick)

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575 Q. Will you tell the Examiner why you did not have a personal conference with these ten men before you discharged them?

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576 The Witness: Well, I simply felt that my conversation with the man whom I understood was the executive head of this union was sufficient. I expressed my indignation to him regarding the handbill.

Q. When did you express it to him? A. The day I was

in his office in Washington, just then, which was Friday, August 26, I believe was the date.

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577 Q. You had no objection to these leaflets up to this time, had you?

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The Witness: I thought the leaflets up to that time were done without a lot of consideration. I thought the wording in many instances was untrue, but as I understood it, that was protected union activity, and I made no objection to any of the union boys or any of the boys on the picket line.

Q. You knew all of those men on the picket line were union members, didn't you? A. I had to assume that. There was some on the line whom I didn't know on occasions.

Mr. Blakeney: Didn't know what?

The Witness: I didn't know who they were.

Q. But all of your employees who were on the line,
578 all whom you fired you knew were members of the union, did you not? A. I was reasonably sure that they were. I had no way of being certain.

Q. Now will you tell the Examiner just exactly who told you that Mr. Stroupe distributed this leaflet? A. Mr. Stroupe?

Q. Yes. A. I saw Mr. Stroupe distribute the leaflet.

Q. You personally saw him? A. Yes, sir.

* * * * * * * * * *

Q. Is Mr. Walker still in your employ? A. Yes, sir.

Q. Did Mr. Walker tell you of all of these employees whom you fired? A. Yes, sir.

Q. I thought you said yesterday he told you of all but two? A. Well, I am at a disadvantage in this hearing and it may be necessary for me to change a few state-
579 ments that I have made. In fact, yesterday I retracted a couple remarks I made, the reason for that being that I have been out of the office for four weeks

and it was not until Sunday that I was able and in a position to consult counsel regarding this case which came up on Monday, and review all the facts which I, of course, had forgotten in the interim while I was ill.

* * * * * * * * * *

Q. Did you ever call a man into your office and say, "Joe, I am sorry, but we have got— A. (interrupting) I can remember one occasion that we had an employee who was a very nice person, had been with us a couple of years, but our business was expanding and he simply was
580 not, by his own admission, expanding as fast as the business was.

His particular position required that he be able to function as fast as the business was moving ahead. I called him in. We discussed at length the situation. I told him we would have to let him go. He wanted to know when. I told him that would depend upon when he procured another job, other employment.

I proceeded to help him procure that employment. As fast as he was hired by the other company, his discharge became effective.

Q. How long did you say he worked for you? A. About two years.

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581 Redirect Examination

Q. (By Mr. Blakeney) Mr. Crutchfield, to be as specific as possible in regard to this matter of discharging these men, will you state or can you state when you arrived at your decision to discharge them? A. I believe I
582 stated that yesterday as well as I recall it was sometime before noon on Monday, prior to their discharge on Saturday.

Q. All right now what were the circumstances or the facts upon which you arrived at that decision? A. Well, after I returned to the office on Monday morning, about eight-thirty or nine o'clock, I saw for the first time a copy of the handbill. There had been accumulated for me telephone

comments, as well as memoranda relating to the reaction from the public, as well as distributors, television set dealers, reaction in connection with the second-rate city handbill. I studied this very carefully.

Q. Did you go into it with Mr. Walker? A. Yes, sir, I did.

Q. Go ahead. A. I received telephone calls from several of the larger distributors in town telling me what effect or how damaging this handbill would be to their business, which later proved to be true, their business and ours.

I went through all the ramifications in connection with the handbill that I could. I learned of its wide distribution not only in Charlotte, but in other areas. I learned that it had been given out on the public square. I learned that some of the people who were giving the handbill out on the square were acting as if they were news boys, saying, "Read all about television" and handing these to people
583 on and off the buses. I learned that prior to the time the decision was made that several, two or three of these ten men had commented to other employees of ours that this was only the beginning, that they were going to exert more and greater pressure of this sort.

I realized that this handbill, "Is Charlotte a Second-Rate City" was something entirely new, having nothing to do with the controversy. There was nothing on the handbill indicating that there was a controversy or indicating that the handbill was distributed by these ten men, that it was a union handbill. I learned that many of the ten men gave it out without commenting as Mr. Hicks testified and without banners announcing a dispute, and I decided, I guess it was about on noon on that Monday, that since they had turned from telling the public how unfair we were to them as employees and started telling the public how inferior and unfair we were to the public, that we could not afford to tolerate this sort of espionage on the part of our own employees, which I am firmly convinced that is what it was.

. . . . . .

586 Recross Examination

Q. (By Mr. McCormick) You discharged these men on September 3? A. Yes, sir.

Q. And you say you made your decision to discharge them on August 29, that being Monday? A. Well, if that is Monday, that's correct.

Q. You look and tell me if that is correct. A. I
587 will take your word for it.

Q. You tell me you discharged them on the 29th or made the decision to discharge them on the 29th? A. That's correct.

. . . . . .

Redirect Examination

Q. (By Mr. Blakeney) And after the 29th why was it that they were not actually discharged until September 3? A. Well, I had been away. I had been in New York for a week and I had been down to have my confidential, off the record talk with Mr. Wimberly in Washington, and having been away, I had many things to do to clear my desk.

I had to talk with my associates, Mr. Walker and others around the station. I wanted to be definitely sure that my decision was correct. I am certainly not infallible. I wanted their opinion. I wanted to go over the matter in detail with the president of our company. As stated yesterday, he was in California that week. It took me, as a matter of fact, two days to talk with him on the phone. I can't explain why, but we couldn't reach him for two days. I did get to talk to him for about five minutes and told him about the handbill, read it to him, and I told him of my decision, and also read him the letter to the Commission, asking the Commission to revoke our license, told him that had something to do with it, to prove that our decision was right,
588 and then he said he wanted to think it over a little bit too, so then he came back on the train, stopped in Chicago for a day, and it was not until three o'clock Saturday afternoon that I could contact Mr. Bryan again.

And immediately when I made that decision we started work on the processing of the letters to the individuals, explaining to them why they were discharged. We drew up severance paychecks for them, which was rather complicated, giving them all two weeks, I believe it was, pay, plus vacation pay that was due many of them. There was a certain routine that it was necessary for us to go through.

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589 Q. (By Trial Examiner Martin) With reference to the discharge clause that was in dispute, I show you Respondent's Exhibit 6, pages 13 and 14, and ask you if that is the company's last proposal with reference to that disputed subject matter or is there something else there that covers it as well? A. As I stated before, I have been out for so long and this was back many months
590 ago, I wonder if you could get an answer from our counsel on that? They are probably more familiar with it at this point than I. I assume it is.

Trial Examiner Martin: Perhaps it can be stipulated.

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Trial Examiner Martin: Perhaps it could be stipulated on the union's last proposal on this subject also.

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592 Mr. Blakeney: No, essentially the disagreement on the matter of arbitration of discharges, as it finally existed, was over the extent and scope of the power of an arbitrator in such case.

Trial Examiner Martin: And the union's position I gather was that the arbitrator's decision should be final as to whether or not the man should be discharged; whereas the company's position is reflected in this clause that I just showed the witness.

Mr. McCormick: May I look at that clause?

Trial Examiner Martin: Yes. It seems to be that the company felt that the arbitrator should have the power

merely to determine whether or not the facts existed for which the person was discharged.

Mr. Blakeney: Yes, sir.

Trial Examiner Martin: And if the facts did exist, the arbitrator had no authority to alter the company's decision in the matter.

593 Mr. Blakeney: That's right, if the arbitrator found the facts to be other than what the company contended that he could direct reinstatement of the man with back pay and the company must abide by it.

If, however, the arbitrator found the facts to be as the company contended, then he should not have the authority to substitute his judgment for that of the company's as to whether such facts constituted sufficient grounds for discharging a man.

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The Witness: The discharge clause as we proposed is more nearly the type thing we are operating under with the other two unions that we have. As a matter of fact, they have no discharge clauses in their contracts at
594 all, but we felt that would more or less equalize it.

Mr. McCormick: Did I understand you to say that these were what you had with other unions?

The Witness: Yes, sir, both American of Federation unions.

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598 Q. (Trial Examiner Martin) Now with reference to the discharge letters, Mr. Crutchfield, I show you one, I hand you General Counsel's Exhibit 2-B which is the discharge letter to Mr. Stroupe. I believe in this respect, at least, the same language is used in all of them.

I will ask you to read the whole letter to yourself. A. I think I am familiar with its contents.

Q What I want to know is, the letter refers to a number of things. It refers in the first paragraph to the men having begun to denounce the company publicly as unfair. Then

the letter refers to placards and literature attacking us, and then the third paragraph refers to propaganda and the fourth paragraph refers to the men being busy trying to turn customers and the public against us in every possible way, and so forth. A. I don't believe that mentions customers, sir. It refers to the public.

599 Q. Well, the letter speaks for itself. A. Yes.

Q. My question is whether or not this record thus far now reflects, so far as you know, the deeds and actions of these men that gave rise to these letters or whether there were some other things as well, other than what is now reflected in the record?

. . . . . .

601 Q. Any other actions that are not thus far disclosed in the record to which your letter was referring? A. The unfair to organized labor I mentioned came out after the discharge. I think I misunderstood your question. No, their discharge as stated here was based solely on the second rate city handbill and its effect on us and our clients and non-clients who were in the television business.

Q. Did you take any steps to inform the public that your television operations were not second rate, except by the discharge of the men, if that could be—I will rephrase that question, withdraw it.

Did you take any steps, did you put any newspaper ads in or make any broadcasts or do anything else to inform the public that your television operations were not second-rate? A. Well certainly we had never considered

602 them second-rate. We didn't think it necessary to tell the public. That is more or less up to the public to decide what they thought of our operation, I think.

Q. My question, I will state the question in another way. Did you do anything to counteract the effect of General Counsel's Exhibit 10-D in the nature of a handbill or newspaper ad or statements over the air? A. No ads on it. As a matter of fact, we—I am positive we made no statements

over the air relative to this controversy, our side or the union's side. We did send out I believe as I testified yesterday, several thousand of these little blue folders calling attention to the new network schedule that was to begin in the fall, but we didn't consider our operations second-rate at all. Ours was as good as any stations and still is.

Q. With reference to Respondent's Exhibit 2 which I hand you, I believe you testified that you received it the Monday you returned to your office after your trip to New York and Washington? A. That's correct.

Q. Do you know when the company received it? A. No, I do not. It was on my desk Monday with many other letters, much other correspondence. Mr. Minor had sent it to my office, but as I recall, it was sometime Monday
603 afternoon when I got to this letter.

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609 Redirect Examination

Q. (By Mr. Blakeney)

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613 Q. All the programs that the leaflet deals with, General Counsel's No. 7, are they network programs or are they WBT originated programs? A. The only WBT originated program on the whole list is the news program, 6:45 to 7:00, and only eight minutes of that 15 minute program is locally originated. But the rest of it is network, the same network shows that were available at that time in New York and the other cities.

In other words, we had no control over the type programing the networks put on during the summer months or the winter months either, for that matter.

Q. But did WBT have other programs or did it do any other broadcasting over TV in addition to the network programs dealt with in that schedule? A. Well, the
614 only other is the one I mentioned yesterday, the multiscope programing of news in the afternoon, that plus the Dick Pitt show on Saturday night.

Q. Did you not mention or did you mention a program dealing with tape or dealing with news during the day? A. Oh yes, that is the multiscope I just mentioned.

Q. Did you not also mention another newscast put on by the company or did you? A. Well, I said eight minutes of the fifteen minute night-time show is a local newscast put on by the company. The first fifteen minutes is purchased from a syndicate company like the Newsreel in theatres and the last fifteen minutes or the last eight minutes is locally produced.

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616 LARRY WALKER

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Martin: Please give your name and address to the reporter.

The Witness: Larry Walker, 821 Mount Vernon Avenue, Charlotte.

Q. (By Mr. Blakeney) Your name is Larry Walker? A. Yes, sir.

Q. Are you connected with WBT, Mr. Walker? A. Yes, sir.

Q. What is your position there? A. Secretary-treasurer and Assistant Manager.

Q. Was that true in the summer of 1949? A. It was.

Q. Do you recall the approximate period of time in which these leaflets which have been identified, and which has been put in evidence as General Counsel's Exhibit 10-D and is headed at the top, "Is Charlotte a Second-Class City", do you recall seeing any of those leaflets being

617 handed out by any persons? A. Yes, sir.

Q. I wish you would name for the Trial Examiner and the record the names of the persons whom you saw handing that leaflet out? A. I saw Mr. Stronpe; Mr.

Hilker; Mr. Hill; Mr. Hicks; Mr. Richardson; Mr. Flowers; Mr. Patterson; Mr. Sullivan and Mr. Perkins. If that is ten, I saw the ten men. I may have forgotten one of the names, I don't know, I didn't check myself.

Q. Yes, that would be ten.

Mr. McCormick: You left Mr. Hingle out.

The Witness: Mr. Hingle I did see.

Q. Now you say you saw or do you say whether or not you saw each of these men handing out this particular leaflet? A. Yes, sir, I did.

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Cross Examination

Q. (By Mr. McCormick) Mr. Walker, you were in town all during this period, is that true? A. Yes, sir.

Q. You did not make any trips as Mr. Crutchfield
618 at this time? A. No, I was right here.

Q. I wish you would tell the Trial Examiner when you saw Mr. Flowers distributing the leaflet? A. Mr. Flowers was there the latter part of the week. I'm sorry I can't tell you the date. As a matter of fact, Mr. Crutchfield was in New York and Washington during that time and I was using Mr. Crutchfield's office and I kept tract of the men who gave out this particular leaflet, because I had talked to Mr. Crutchfield about it on the day it started, and I cannot tell you which day. I do know that Mr. Stroupe was on the picket line on Monday, but the other men, I do not know which days, except that they came and went periodically during the period from Wednesday morning, which was the first time I knew of it.

Mr. Blakeney: What Wednesday, please?

Mr. McCormick: Just a minute, I am asking the questions.

The Witness: Wednesday, August 24th, through the following Monday and they were there Tuesday morning, but they disappeared during the day on Tuesday. At what time, I do not know.

Q. You didn't see them distributed on Tuesday? A. Tuesday morning when I came to work, I can't remember which men were out there, but I saw the pamphlets Tuesday morning, but I never saw them again. Tuesday afternoon they had gone back to one of the first pamphlets they
619 had given out regarding the controversy between the company and the union.

Q. Where is your office in the Wilder Building? A. My office at that time was down the hall, but Mr. Crutchfield was out of town and I was using his. Mine is opposite his on the Tryon Street side of the Wilder Building.

Q. What floor? A. The sixth floor.

Q. Now where were you when you saw these leaflets being handed out? A. In Mr. Crutchfield's office, in the Wilder Soda Shop, in Western Union, and on the street.

Q. Did you ever get handed one of these leaflets? A. I could have many times. I just didn't take one, because so many people had brought them to me that I knew them, which hurt, and I had no particular interest in having one of the men give me one. If I had, I would have taken it, but I was never actually given one, to my knowledge.

Q. Now you stated you saw some of them being distributed from Mr. Crutchfield's office. Six floors up is pretty high, isn't it? A. It is not too high to get a very definite idea of exactly the fact that that is what is going on and I could verify that in any case in a matter of just the period of time it took me to go down to the first floor.

Q. Did you ever go down to the first floor to verify
620 what you had seen? A. Many times. Many times, to the Wilder Soda Shop, and the Western Union.

Q. For the purpose of seeing— A. And to the street.

Q. For the purpose of seeing who was distributing them? A. Not who, because that was easily distinguishable from the sixth floor. To make sure it was the second-rate handbill, which was incidentally the only one I saw during that period from Wednesday or rather through Monday. The street was littered with them. There were hundreds and

hundreds of them over the sidewalk and never did I see any but that particular one.

Q. Are you sure that the people whom you saw distributing these leaflets were distributing this particular leaflet? A. Yes, sir.

Q. Are you sure? You are sure that they weren't distributing some other leaflet? A. No. I made very positive of that fact, because that was the reason that I was checking the individuals, was purely to establish that thing.

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622 Q. What is your procedure when you discharge people, Mr. Walker? A. Well, if you are getting
623 to the two people that you mentioned this morning, whom Mr. Crutchfield referred to me specifically—

Q. Anybody. A. Miss Davis happened to be transcription librarian at the station. She was a young girl, no business training whatsoever, and I had talked to her on several occasions about the inadequacies of the job that she was doing and on the day that she was actually discharged there were four very serious errors made by her and I gave her two weeks severance pay and discharged her.

Q. Did you call her in the office and ask her? A. Ask her about the errors?

Q. About the errors, yes, sir. A. Well, they were perfectly obvious to me before I even went to her about them. I had complete information on them from the air and the Program Department and the sponsors.

Q. But you did go to her about them? A. I went to her at the time of the discharge, not before that, because I had all the information I wanted from them.

Q. You told her to her face that you would have to let her go? A. That's right, yes, sir.

Q. How about this other one? A. Bill Davis. I discussed that with him personally. Bill had been in
624 and out of the employ of WBT for a matter of years. He played bass on one particular program

and several of the other boys doubled on base and it was the only instrument he played, the only contribution he made to the show at all, and I called Mr. Davis in on several occasions and we discussed it. He had a home and farm at High Point and at that time there were six programs a week. He was hiring a substitute for better than half of his programs so that he didn't have to come from High Point back to Charlotte to do those shows. I told him exactly what the situation was, that I could replace him on the show to better advantage as far as the program was concerned, and he agreed it made complete sense and Mr. Davis was given four weeks notice and left the employ of the company.

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Redirect Examination

Q. (By Mr. Blakeney) Mr. Walker, these leaflets that you say 10-D, "Is Charlotte a Second-Class City", that you say you saw being distributed, did you see anything with respect to those leaflets being put in any public conveyances? A. I saw them put in the buses which stop right at that very corner at Third and Tryon.

Q. Describe what were the circumstances, how that was done, who did it, and so forth? A. Well, the men who were carrying the—were giving away the leaflets at that
625 particular time, every time a bus stopped, would give leaflets to the individuals sitting on that particular side of the bus and put extra leaflets in the bus.

Q. And do what? A. And put additional pamphlets or Leaflets in the bus.

Q. Well, whereabouts in the bus? A. Just through the window.

Q. You mean one or more or a batch? A. No, they put a batch of them, several of them, a dozen of them. I couldn't say how many.

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626 Q. (By Mr. Blakeney) Do you recall whether or not you talked with Mr. Crutchfield about this leaflet distribution matter over the telephone while he was away? A. Yes, sir, I called Mr. Crutchfield on Wednesday morning, August 24th, got him about ten-thirty or eleven o'clock, because from the time people—about ten o'clock, by that time I had received several of the handbills, the second-class city handbills, I am talking about from employees of the company. I had been called by people in town; I had been notified in many ways of what was going on in the street and I was in charge during Mr. Crutchfield's absence, so my first natural inclination was to contact him as fast as I could.

I mailed one of those airmail to Mr. Crutchfield, to the Ambassador Hotel, but he had left before it arrived. He had left for Washington and it came back to me the following Monday, to the return address.

Q. All right, just a moment please. How long have you been connected with the radio business, Mr. Walker?

627 A. Since 1930.

Q. What have you had to do with the television operations of WBTV? A. I had charge of WBTV of the television operation of WBTV.

Q. I wish you would state whether or not there are any untruthful statements in this handbill, "Is Charlotte a Second-Class City", General Counsel's Exhibit 10-D? A. Yes, sir.

Q. What is untruthful in it? A. A statement which says "Did you know that all programs presented over WBTV are on film and may be from one day to five years old". Also the second sentence which says, "There are no local programs presented by WBTV".

Q. What about the question raised, or question put once or twice or more in the leaflet, to the effect as to whether or not the television operations of WBTV are second-class? Were they then or now second class? A. They were not at that time and they are not today, definitely not.

Q. To what extent and wherein were they then on a par with television operations elsewhere? A. Well, I happened to know because that was our first television experience, of course, at WBTV, since the station went on the air July 15 and it was my business to check schedules or I made it my business rather to check schedules in other
628 television areas and the film and kinescope, which is a recording of a live television program.

Programs that we ran were identical with the ones being run in New York, Washington, Chicago, Los Angeles, except that in our case, we were the only television station in this area, therefore, we were not restricted to one network. We had the best that the four networks had to offer, where in the case of New York, the four network stations, each station obviously had to limit itself to the programs of that particular network; Columbia for CBS programs; NBC for NBC, and so forth, where we had four networks, an affiliated contract, and had programs from four of them currently.

Q. Did that leaflet produce any reaction from the dealers and distributors who were connected with the sale of television sets in Charlotte or in this territory? A. It certainly did. It started—as a matter of fact, as far as reaction is concerned, from the dealers and distributors Wednesday morning, because they called me Wednesday morning, as soon as they got wind of what was going on down the street, and we have every reason to believe, we have been told by those men over and over that this leaflet had a very detrimental effect on television itself in this area and on their sale of TV sets.

Q. To what extent and wherein was WBT interested in the sale of television sets by them? A. Well, televi-
629 sion does not work today as AM or standard radio does, because standard radio counts heads or listeners, let's say audience. In television today you count sets in the area and the number of sets we get in the area governs the price we may charge for WBTV time.

At that point in the operation we had started at a standard rate, which has been established in the industry as the lowest possible rate, and our hope, of course, was that we could get enough sets in the area, as fast as possible, so that we could increase that rate as soon as was practical and feasible, thereby bringing some little income into television to offset the terrific expenditure.

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Recross Examination

Q. (By Mr. McCormick) May I have this please, sir? A. yes, sir.

Q. You have testified as being the one who ran the television? A. That's right.

Q. What is your estimate of the time, percentage of time of Telecast where films are used? A. Our night time operation is all film and if you are including kinescope in your general use of the word, which is practical, of course, because they are both film.

Q. Yes, sir. A. At that time we were from 6:30 630 until 9:30. Now we are 6:30 and 10:30 and some nights 11:00.

Q. That is all film? A. All film with the exception of one newscast 7:45. The first seven minutes of that is film, interview of President Truman's speech yesterday, Congress discussions on this or that sort of thing. The last eight minutes is assembled from pictures that are flown in here daily and local pictures which we take and copies written as an announcer does that on the air, of course, as the pictures that have to do with the particular story appear on the screen.

Q. So that it would be truthful to say then that you broadcast three hours a night at the time these leaflets were handed out, out of which seven minutes was not filmed? A. That is not the whole operation, however. You asked me how much was filmed. We were on the air from twelve noon until 9:30.

Trial Examiner Martin: With television?

The Witness: Yes, sir, and intermittently from twelve noon until half past six. We had newscasts all during the afternoon, which were locally produced and presented.

Q. Will you give me your estimate of the percentage of time of your Telecast was devoted to film? I don't care how long you broadcast or telecast, so long as I can find that out. A. I would say, and this is an estimate, of course, that we did approximately two to two and a half hours a day
631 that we did of live programing; that we did three hours a day of film, and the remainder of that time was for test pattern and test tone, which was very necessary, because you can't tune a television set—you can't install one correctly unless you have a test pattern and test tone to tune to. Of course, we went back to that intermittently after every newscast or anything we did, we went back to test pattern so that the sets being installed could be tuned to the station. That is necessary. Does that answer your question, sir?

Q. Then leaving out the test pattern, which is done for installation purposes, not as part of your— A. (Interposing) Figuring on nine and a half hours a day, which we were on, we had three and a half hours of film, approximately two and a half hours of live programing and the rest of it, of course, was the other.

Q. Just testing? A. That's right.

Q. Now these films were sometimes film prepared by movie companies for use in televising or telecasting, is that correct? A. Yes, very definitely.

Q. And sometimes they were over a day old, isn't that correct? A. Very often they were.

Q. Do you have any cameras there for taking pic-
632 tures or televising of local events such as a ball-game? A. No, sir.

Q. So that isn't a lie when it says you cannot receive local baseball games, that is the truth? A. Oh, no, we could not at that time. If we had the cable as some of the gentlemen have stated before us, we could have received baseball

games for the National, most all of the baseball games, but the cable isn't available to us yet and won't be for some months yet.

Q. It is only an opinion of yours that you were running a first class program? A. I certainly am entitled to that opinon. I was comparing our operations to New York, Los Angeles, Chicago and the other big towns and the only difference in its operations actually is that I couldn't put on the local baseball games or that sort of thing.

The cable, of course, is out of our hands entirely. I have nothing to do with that. There are many more stations off the cable today than there are on. They are all having to get their programs on a delayed basis, exactly as WBT.

Q. In telecasting you get two and a half hours of newscasts? A. I would estimate it was that many altogether. Newscasts ran twenty, twenty-five, thirty minutes apiece.

Q. Some of which was on film as you explained? A. No, none of that. I am talking now—pardon me, sir.
633 That is a little bit more clear to me obviously than it would be to you. I am speaking of the afternoon newscasts. In the night time schedule, there was one fifteen minute newscast was film, the last eight minutes was local. All the afternoon was not film.

Trial Examiner Martin: Where do the newscasts come from?

The Witness: They are flown in from New York. They are taken last night and yesterday and developed through the night, flown in every day. And we have on two occasions, maybe more, I am not sure, a standby in case of difficulties, bad weather and so forth.

Trial Examiner Martin: Are you through?

Mr. McCormick: Yes sir, I am through.

Mr. Blakeney: You say all of the afternoon newscasts were not film. Do you mean none of the afternoon newscasts was filmed?

The Witness: That's right.

Mr. Blakeney: Was it locally produced?

The Witness: Every bit of it; yes, sir.

Mr. Blakeney: That's all.

Trial Examiner Martin: Let me ask you this question. It may have been included in the commerce stipulation, I am not sure. Could you say what percentage of your broadcast time for both radio and television is used in broadcasting or rebroadcasting programs that originate
634 outside of the State of North Carolina?

Mr. Blakeney: Are you asking about radio too, Mr. Examiner.

Trial Examiner Martin: Yes.

Mr. Blakeney: That, I think, is in the stipulation on commerce.

The Witness: That has been covered in the network, the percentage of the network which we carry.

Trial Examiner Martin: That was in the stipulation?

The Witness: It is logical to assume our network originates out of the State because it all does with the exception of very few instances. We feed a network program once in a while, but that is not general.

Mr. McCormick: The company has said only substantially less than 50% of their programs originate outside of the State of North Carolina, but they have given nothing other than that, except this, that substantially more than—

Trial Examiner Martin: Originates in?

Mr. McCormick: In excess of 80% of their income is derived from programs broadcast from Charlotte originating here. If you wish to get a more accurate figure, they gave $100,000.00 as their income, which, of course, is ridiculous, but I mean it is enough for us, in my opinion, enough for us to take jurisdiction.

Trial Examiner Martin: Is the company challeng-
635 ing jurisdiction, Mr. Blakeney?

Mr. Blakeney: No, sir.

Trial Examiner Martin: You will concede the Board has jurisdiction?

Mr. Blakeney: Yes.

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P. H. HAIGLER

a witness called by and on behalf of Respondent, being first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Blakeney)

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Q. You live here in Charlotte, Mr. Haigler? A. Yes, sir.

636 Q. Where do you work? A. Local Linen Service.

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Q. I will ask you to look at that leaflet there that is headed, "Is Charlotte a Second-Class City" and tell us whether you have ever seen a copy of that? A. Yes, sir.

Q. Where did you see it? A. I was given two.

Q. Where? A. In front of WBT, the Wilder Building.

Q. Do you recall the day of the week? A. On Monday.

Q. Do you know who gave it to you? A. Mr. Hicks gave me the first one and Mr. Stroupe gave me the second one.

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637 Q. Now in connection with your work, what do you do? Where do you go in your work? A. All over town.

Q. Delivering, picking up and delivering the linen laundry service work? A. Yes, sir.

Q. Will you state whether or not you, in the course of that work, in your visiting the various firms and establishments over town, do you ever discuss or have you heard discussions of this leaflet second-class handbill?

Mr. McCormick: Objection.

Mr. Blakeney: The only purpose is to show the extent of knowledge, public knowledge of the leaflet.

Mr. McCormick: I will stipulate that the public was aware of the leaflet.

Mr. Blakeney: I also want to show not only that they

were aware, but that it was a matter generally discussed and to which there was a public reaction.

638 Mr. McCormick: I will stipulate that the matter was generally discussed by the public and that it had some reaction. I further object to this kind of statement because although it may have been discussed over the town, what is pertinent here, if at all, is what happened to the company. The fact that it was discussed downtown, in the barber shop, is of no value to this hearing. If anything is competent, the fact that the company received some kind of word of this or some communication from somebody might be pertinent, but whether it was discussed in some other business establishment, pool room or beer parlor is of no value here. I will stipulate it was discussed.

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639 Q. Could you give us some estimate as to the extent and number of occasions on which you have heard it discussed? A. Well, at the time I received one of these and during the next two or three days, I mean every place, nearly every place that I go into, I would hear something, some comment on it.

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640 KEITH S. BYERLY

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Blakeney) Mr. Byerly, are you connected with WBT? A. Yes, sir, I am general sales manager.

Q. Were you working with WBT in the summer of '49? A. Yes, sir.

Q. Do you recall seeing any copy or copies of the leaflet that you see there on the desk in front of you, headed, "Is Charlotte a Second-Class City"? A. Yes, sir, I did.

Q. Do you recall where you saw them? A. In front of the Wilder Building and later then, of course, in
641 WBT offices.

Q. Do you recall the circumstances under which you first saw it? A. I first saw it when I entered the studio one morning, I believe it was, in which it was handed to me by Mr. Richardson.

Q. Did he say anything to you at the time he gave it to you? A. No, he did not.

Q. Did you later have one handed to you by anybody else? A. No, that is the only one I received.

Q. Did you ever see anyone else handing out this particular leaflet? A. Yes, I saw Mr. Perkins.

Q. Was that the same day or another day? A. If I remember correctly, it was the second day after the day I received it.

Q. Do you recall the days of the week on either occasion? A. I do not.

Q. As general sales manager for WBT, do you contact the people who advertise over and sponsor programs over WBT? A. Yes, I do.

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642 Q. Can you give us some idea as to the frequency or extent of their raising the subject or discussing the subject with you or the others that you know of? A. Well, frequently business people would ask me about it.

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643 Mr. McCormick: I will stipulate that they contacted him and asked him about it, hundreds of them.

Mr. Blakeney: It is so stipulated. That is all, Mr. Byerly.

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J. T. LAND

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Q. (By Mr. Blakeney) Mr. Land, where do you work? A. Central Lumber Company.

Q. Do you have any connection with WBT? A. No, sir.

Q. You are appearing here under requirement of
644 subpoena? A. That's right, sir.

Q. Do you recall ever seeing before a copy of the leaflet that is on the desk there in front of you headed, "Is Charlotte a Second-Class City"? A. Yes, I do.

Q. Where do you recall first seeing it? A. First I saw it at Myrtle Beach, South Carolina.

Q. Where did you next see it? A. In Charlotte, in front of the Wilder Building.

Q. Do you recall the day of the week when you saw one in front of the Wilder Building? A. Yes, it was Monday.

Q. State the circumstances under which you saw it there? A. It was handed to me in front of the Wilder Building, by whom, I can't remember.

Q. Did you see anybody else handing them out there at the time? A. Yes, sir, it seems like at the time there were several people handing them out.

Q. Was anything said to you at the time it was handed out? A. No, sir, except a greeting.

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645 Q. Do you recall ever discussing that handbill or its contents with anybody or hearing any discussion of it anywhere? A. Yes, I heard some discussion of the handbill.

Q. Do you recall where? A. Well, in my office, in different offices around town that I visit.

Q. Different offices around town that you visit? A. Yes, sir. I am in the lumber and mill work business, estimator and salesman. Of course, it was not discussed too much, not by me, because we are too busy.

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646 WALLACE J. JORGENSON

a witness called by and on behalf of the Respondent,

being first duly sworn, was examined and testified as follows:

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Q. (By Mr. Blakeney) Mr. Jorgenson, you work at WBT? A. Yes, sir.

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647 Q. Now you say you are a local sales manager? A. That's right, sir.

Q. Do you have personal contact with advertisers and customers of WBT? A. I do.

648 Q. Well, in connection with that work, have you ever had occasion when those customers or advertisers have discussed with you or brought up to you this particular leaflet and the distribution of it? A. Yes, sir.

Q. Will you give us some estimate as to the frequency and extent of those occasions? A. During the time when the leaflets were being passed out on the street, I would say the majority of the people actually made mention of it.

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Q. If I may, I will make it a little more specific. Did any of them discuss it or comment upon it with specific reference to the television business and its effect, if any, upon television business? A. Yes, sir.

Q. What did they say in that connection? A. One of my clients called me on the telephone. He had received

649 a copy of the pamphlet in the mail. He is one of my best accounts. He was very disturbed when he received it in the mail and said, "Isn't there something you can do about it?" He said, "That will hurt the television business in Charlotte."

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JOHN C. ERWIN

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Blakeney) Mr. Erwin, what business are you in? A. Wholesale distributors.

Q. In that business do you distribute radio television sets? A. Yes, sir. We handle the Zenith line.

650 Q. I will ask you to think back to the summer of 1949, Mr. Erwin, and state approximately what was the pattern or line of your sales commencing with the month of July and on into the month of October? A. Well, sir, I do not have my July figures because I did not bring them, but the month of August I do have, and I might say that July probably was an abnormal month because I believe that is the time that WBT first came on the air and we probably had abnormal business, sampling dealers, and so forth. But taking our Television Department, and I am speaking only of that department, and taking our August sales figures, as 100%, our September figures were 31% of that figure. In other words, off approximately 69%.

Q. And thereafter? A. Well, in October, I jotted down October and that came back ahead of August sales to 119% of the figures. In other words, 19% ahead of August. Our September, I mean August is the base month, I am comparing it with.

Q. Now the drop that you have referred to in the month of September, can you state whether or to what extent from your experience in this line of work, whether or not and to what extent that was a normal seasonal drop? A. I would say it was an abnormal condition, sir, because our previous experience has been that in the fall of the year, after

651 vacations are over and people come back indoors, so to speak, that our radio time, which has been our past experience, but they follow very close the television and radio sales would, so far as seasonal curves are concerned, that our business has always picked up or increased beginning with the month of September and going on with gradual increases into the fall and on up to the peak, at Christmas time.

Q. Mr. Erwin, do you have any stock or financial interest in WBT in any way? A. No, sir.

Q. You are appearing here under requirement of a subpoena? A. Yes, sir.

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THOMAS N. GLASGOW

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Q. (By Mr. Blakeney) Mr. Glasgow, you live here in Charlotte? A. Yes, sir.

652 Q. What business are you in, sir? A. I am in the wholesale distributing business.

Q. Were you in that business in the summer of '49? A. Yes, sir.

Q. I will ask you to look there on the desk in front of you at a little leaflet or handbill which is headed, "Is Charlotte a Second-Class City" and ask you if in late August or thereabouts of 1949 you ever saw one of those? A. Yes, sir, I have seen them. I saw them—I was handed one on the street, as I recall, and I also got one in the mail.

Q. In your line of work do you have contact and discuss business, along the distributor line, with other people who were to sell and distribute radio and television sets? A. Yes.

Q. Will you state whether or not there was any discussion among such people at or about the time that you had or saw that handbill, whether or not there was any discussion among the people in that line of work of that handbill? A. Yes, sir, there definitely was. In fact, it was a matter of discussion when anyone was discussing television, which was quite on the lips of the people here during that time, when it was coming in, and it was discussed quite a bit; yes, sir.

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653 Mr. Blakeney: The question I wish to ask is to what extent, if any, did people who were connected with television express concern or disturbance as to the effect that this leaflet was having or was going to have on television business.

Trial Examiner Martin: Well, he may answer.

The Witness: I recall my own attitude and expressions, that this disturbance between the station and its employees was, I thought, one of the major reasons, one of the major reasons for the disappointing of all of us who were in the television business in the amount of business we had
654 or the way that sales curve went forward on it. I have only general recollections. I had no idea I would be sitting here. I made no memoranda of recollections of other people's comments. I made those comments myself and I make them now as a sincere belief, sir.

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Q. Do you recall your own comments and expressions with television people in regard to that leaflet there? A. Well, we felt it a very distressing leaflet to be gotten out.

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Trial Examiner Martin: Did you so state to people?

The Witness: Oh, yes, because it was a vital part with us, vital department.

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Mr. Blakeney: It was a vital what?

The Witness: It was a vital department with us.
655 Every distributor had substantial investment at that time. We knew the normal national cycle or curve of sales and this departed from it very adversely and it seemed to be tied in with this disturbance at the station.

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Cross Examination

Q. (By Mr. McCormick) Did you say you are in the

wholesale distribution of television equipment? A. Television receiving sets; yes, sir.

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Q. There was a drop in September? A. Yes. Now I don't know anything about radio—I mean television, excepting that in all appearances, it follows the radio
656 cycle. The radio cycle, it is a home inside entertainment and beginning with September, when people come back from their vacations, and so forth, radio goes up month by month by month. Radio is at the bottom in September. It has just been picking up.

Q. Radio did? A. I mean television hit the bottom in September, when it should have been picking up. Radio done remarkably well.

Q. The television curve did not follow the radio curve? A. No, sir. That is the recollection I have which I will be glad to substantiate.

Q. That is good enough for me. A. From the figures, if I can.

Q. That is good enough for me, sir. Tell me just this. Did you have all the equipment available for sale had anybody wanted it at that time? A. Oh, yes, sir. We had $1,500, $2,000 worth of equipment. We employed an exchange service man. We bought samples of stock running into thousands of dollars, all that Motorola made, to be able to enter into that choice market, if the curve followed the normal curve in television, open stock.

Q. There was no reason for this drop because of your failure to supply the demands? A. No, sir. As a matter of fact, before I got through, I relieved myself of a very substantial amount of business—of sets by shipping
657 it to other centers where they had active business. It was a distressing experience, I assure you, sir.

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Trial Examiner Martin: Mr. Glasgow, did you make any contact with any officers of Jefferson Standard Broadcast-

ing Company to express your concern over the matter?

The Witness: Yes, sir.

Trial Examiner Martin: Whom did you contact?

The Witness: A factory special man who more or less was a trouble shooter in territories where something was not developing as it should, Mr. Chuck Swanson of the Motorola Company. We handle Motorola. Mr. Erwin handles Zenith. He and I made an appointment with Mr. Crutchfield to inquire as to just what the station could do to enable a breaking of this abnormal and unusual curve in the market. We discussed the matter with him and discussed the strike at that time as an integral part of it.

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659 Mr. McCormick: Just one more. Mr. Glasgow, Mr. Erwin has testified and you have too, sir, that there was a drop in sales in Charlotte. Do you know whether that experience was true nationally? Wasn't there a reduction in price of television sets at this time in order to encourage sales? A. I believe you have asked me

660 two questions there. I will try and answer them both. There was a substantial reduction in the price of our sets. I do not know of others, I imagine there was also, in just about this time.

As a matter of fact, ours I think was on August 8 or 10th, at the convention we attended in Chicago at that time, and the reduction in price was very very substantial and we expected by virtue of that price decline a very substantial upswing in sales.

For instance, a set that was selling for $189.00 became $119.00, which is an unheard of reduction on a piece of equipment like that. There was that reduction and we expected the upswing from it. We did not get it, as I have testified. We got a downswing from it.

Now as to the condition in other markets, I presume you mean at that time?

Q. Yes, sir. A. Other markets were on a substantial boom. We received long distance calls from Richmond,

Atlanta, Philadelphia, Washington and I think Memphis, asking if we could let them have sets and in view of the tremendous flop that we had here at that period, we got out from under our substantial inventory that way, that we probably would have had other and more unfortunate reduction on if we hadn't. I remember that very acutely sir.

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661 KENNETH TREDWELL, JR.

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Blakeney) Your name is Kenneth Tredwell? A. Yes, sir.

Q. You work for WBT? A. Yes, sir.

Q. Did you work there in the summer of 1949? A. Yes, sir.

Q. What was your job? A. Program manager of the AM operation that is.

Q. I will ask you to look at a leaflet on the desk there in front of you, headed, "Is Charlotte a Second-Class City" and inquire of you as to whether you ever saw a copy of that before? A. Yes, sir.

Q. Where? A. It was handed to me in front of
662 the Wilder Building.

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Q. Do you recall who gave those four copies to you? A. Yes, sir.

Q. Who? A. Mr. Hill; Mr. Hilker; Mr. Richardson; Mr. Perkins.

Q. Now at the time that these gentlemen gave you these handbills, did anyone of them say anything to you? A. Yes, sir, Mr. Perkins.

Q. What did he say to you? A. This may not be ver-

batim, but this is the essence of it. "In fact, if you think this is tough, wait until you see what we have coming up".

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664 C. A. RUSSELL

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Blakeney) You are Mr. C. A. Russell? A. That's right; yes, sir.

665 Q. You live here in Charlotte, Mr. Russell? A. Yes, sir.

Q. What do you do? A. Arcade Barber Shop. I barber.

Q. I will ask you to look there on the desk in front of you at a little leaflet headed, "Is Charlotte a Second-Class City" and ask you whether you ever recall seeing one of those before? A. Yes, sir.

Q. Where? A. In my shop.

Q. Do you recall who gave it to you or how it came to be there? A. Mr. Hicks brought it in.

Q. Do you know Mr. Hicks? A. Yes, sir.

Q. Either at that time or at any time thereabouts, do you recall Mr. Hicks saying anything to you or making any statement to you in regard to WBT and what, if anything, the men who were picketing at WBT were going to do or intended to do to WBT?

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A. Well, I was cutting his hair and he said that Mr. Crutchfield was in Washington to try to settle this thing up there, but they had told him to come back to the

666 Wilder Building and settle it on the fifth floor and then he said before we are through, we will break WBT.

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J. R. COVINGTON

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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667 Direct Examination

Q. (By Mr. Blakeney) Mr. Covington, you work at WBT? A. Yes, sir.

Q. What is your job there? A. I am promotion manager of the station.

Q. Did you work there in the summer of 1949? A. Yes, sir.

Q. Look at the little leaflet that is on the desk there in front of you, it is headed, "Is Charlotte a Second-Class City" and state whether or not you ever saw a copy of that before? A. Yes, sir, I have seen it before.

Q. Where? A. I had one handed to me as I was entering the Wilder Building.

Q. Who handed it to you? A. Mr. Perkins.

Q. Did Mr. Perkins say anything to you at the time he gave it to you? A. Yes, sir, he said in effect, "Here, show this to 'Crutch' and tell him that there are four or five more coming stronger than this".

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668 S. L. HOLLAND

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Blakeney) Mr. Holland, what business
669 are you in? A. Wholesale distributing.

Q. Have you got any financial interest in Jefferson Standard Broadcasting Company or WBT? A. No, sir.

Q. Are you here pursuant to subpoena? A. Yes, sir.

Q. In your business in the summer of 1949 were you selling any television sets? A. Yes, sir.

Q. What make or brand did you sell? A. Crosley.

Q. I wish you would state to the Examiner and for the record approximately what the pattern of your sales or line of your sales was in August and September and thereabouts. A. Well, our sales in August were considered satisfactory.

Q. All right. A. In September our sales were off considerably. Now I don't have the figures, I can't give you the exact figures, but we were very concerned about our sales in September and at least early October.

Q. Can you say whether or not your concern reached such proportion that you said or did anything or said anything to anybody about it? Did you get in touch with the Broadcasting Company in any way? A. Yes, sir.

670 Q. With whom, do you recall? A. Our General Sales Manager from our factory made a trip down here and at his suggestion we went to see the station.

Q. Which station? A. WBT. We wanted to see Mr. Crutchfield, but as I recall it, he was out of town. I am pretty sure we talked to Mr. Jorgenson, Mr. Covington and I think Mr. Byerly.

Q. Do you recall if that was after August? A. Oh, I am quite sure it was in September. The exact date, I couldn't say.

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671 C. K. SPICER

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Blakeney) Mr. Spicer, you work for WBT? A. Yes, sir.

Q. Did you work there in the summer of '49? A. Yes.

Q. What is your work up there? A. I am business manager.

Q. In late August of '49, do you recall ever seeing one of the leaflets, a copy of one of the leaflets such as is on the desk there in front of you, entitled, "Is Charlotte a Second-Class City"? A. Yes.

Q. Go ahead and state to the Examiner where you saw it and how many occasions you saw it, if you remember? A. It was one of the latter weeks in August, 1949. I was handed one of these leaflets by Thomas W. Perkins.

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675 Redirect Examination

Q. (By Mr. Blakeney) Mr. McCormick was asking you as to the days that you are saying you saw these various persons distributing leaflets, if on those days they might be distributing other leaflets. Can you state whether or not you were paying any particular attention to who was distributing at the time 10-D was being distributed? A. Yes.

Q. Why were you paying particular attention at the time that particular leaflet was being distributed? A. Be-
676 cause I was disturbed about it myself personally, being an employee of the Jefferson Standard Broadcasting Company.

Q. And had Mr. Walker or anybody connected with the Management said anything to you as to taking notice of who was distributing that particular leaflet? A. Yes.

Q. What did he say? A. He requested that I observe who was distributing these leaflets at the time.

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678 H. Y. ALEXANDER

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Blakeney) Mr. Alexander, you live here in Charlotte? A. Yes, sir.

679 Q. What is your business, sir? A. I am with the Southern Bell Telephone Company.

Q. What is your position with Southern Bell? A. District Manager.

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680 Q. Now in the summer of '49, were any television programs available to any television broadcaster in Charlotte off of that cable? A. No, sir.

Q. Are they yet available to any television broadcaster off that cable? A. They are not.

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Cross Examination

681 Q. (By Mr. McCormick) Sir, if application was made to the telephone company for pictures to be transmitted to Charlotte, is the equipment such that those pictures can be transmitted? A. No, sir.

Mr. McCormick: No other questions.

Trial Examiner Martin: Mr. Alexander, to your knowledge, was there any television station in Charlotte other than WBT?

The Witness: Not to my knowledge.

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M. J. MINOR

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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682 Direct Examination

Q. (By Mr. Blakeney) Your name is M. J. Minor? A. Yes, sir.

Q. You live in Charlotte? A. Just outside of Charlotte, Route 3 of Charlotte.

Q. You are the chief engineer at WBT? A. Yes, sir.

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Q. In the summer of 1949, did you ever see any copy or copies of that leaflet there, "Is Charlotte a Second-Class City"? A. Very much so, a lot of them.

Q. Where did you see them? A. In front of the Wilder Building, the boys handing them out.

Q. Whom did you see handing them out? A. By name, do you want me to name each one?

Q. Yes, if you will. A. I saw Mr. Hingle. In fact, I got one from Mr. Hingle. Mr. Sullivan, Mr. Perkins, Mr. Hill, Mr. Hilker, Mr. Hicks and Mr. Patterson. I can't think—I saw all of them and received a bill from most all of them. In fact, I received one from about five of them.

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683 Q. Well, can you state without reference to the persons who you received them from, can you say the persons whom you saw distributing that particular leaflet? A. Oh, yes. Actually I made a record of it. During the first two days of distribution I saw all of the fellows except Stroupe.

Q. Wait a minute, all of the fellows, what fellows? A. All of the ten that were discharged.

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684 Q. Now did you observe anything with respect to the distribution of this handbill and more particularly with respect to whether it was being put on any public conveyances, put into any public conveyances? A. Yes. Practically every bus, I won't say every bus, but on numerous occasions the Duke Power Bus would go along and the windows be open, they would slip them through the window, into the bus, either to people or possibly they would fall on the seats for distribution.

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706 Cross Examination

Q. (By Mr. McCormick)

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Q. And what reason did you give for inquiring into the viewpoints of the addressee with respect to organized labor? A. I didn't give any reason.

Q. Well, will you give one? A. Sure. For a number of years I get numerous applications for work.

Mr. Blakeney: Little louder, Mr. Minor.

707 The Witness: For several years I would get applications for jobs and in most all cases up to say two or three years ago, why I would turn them over to Mr. Hicks or whoever was business manager, just in case he could help him out.

This gentleman it appeared that he was pretty hard up from the story he gave me in his letter, for work. Well, I knew very well it would be no value to—I mean it wouldn't do any good to give his name to Mr. Hicks if he had opposition to organized labor. If they did approve organized labor, maybe Mr. Hicks could do him some good or whoever was representing the union here, and which I could have turned it over and helped the boy out.

I would like to remind there that I did not ask him whether he belonged to the union or not. That was immaterial to me.

Q. You just wanted to know how he felt about organized labor? A. Yes.

Q. You don't recall how this particular applicant for employment felt about it? A. Yes, I got his letter. I got his answer, in which he gave me his view on it.

Q. You weren't operating a closed shop at the time, were you? A. No.

Q. You know what a closed shop is? A. Yes, I was in the union under one.

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717 Redirect Examination

Q. (By Mr. Blakeney)

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730 Mr. Blakeney: Yes, sir. The company is willing to stipulate that Respondent's Exhibit 10 was published on or about November 15, 1949.

Trial Examiner Martin: Is that satisfactory?

Mr. Blakeney: Yes, sir.

Mr. McCormick: I have no objection to that stipulation and enter into it.

Trial Examiner Martin: So stipulated then.

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735 Examination

Q. (By Trial Examiner Martin)

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736 Q. When General Counsel's Exhibit 10-D came out, what was your understanding as to whether or not this resulted from a labor dispute? A. Very obviously I knew what the reasons for it were.

Q. Did you have any understanding as to whether that grew out of a labor dispute? A. Oh, of course. That was out of a labor dispute, but what I thought—

Q. That is what I am asking you for, your understanding. A. Oh, yes, sure.

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755 CHARLES CRUTCHFIELD

recalled as a witness by and on behalf of the Respondent, having been previously sworn, was examined and testified as follows:

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Q. (By Mr. Blakeney) Mr. Crutchfield, when you came back to Charlotte as you have testified, on or about

756 August 28 or August 27, from your trip to New York and Washington, and when you got back to your office on the morning of August 29, was one of the matters which you looked into in connection with the leaflet headed, "Is Charlotte a Second-Class City", is one of the matters that you looked into at that time the extent to which that leaflet had been distributed? A. Yes, sir.

Q. Did you ascertain to your satisfaction whether it had been distributed more widely than the leaflets which had

been distributed theretofore? A. Well, I had known of the prior leaflets being distributed in front of the Wilder Building, on the regular picket line and I had seen them being distributed in front of the Imperial Theatre, where we originate a broadcast, I think every day Monday through Friday, but I had not seen nor had I had any indication that any of the leaflets prior to the Second-Class City leaflet had been distributed on the Square or in restaurants, barber shops, cafes, nor did I know of any of them being mailed out of town.

Q. Well now, did you ascertain to your satisfaction that the leaflet Second-Class City leaflet was being distributed more widely than any of the leaflets theretofore? A. Yes, sir. I can say that because we knew that there were four men on the Square distributing those leaflets. One of
757 them at least was selling his wares as you would sell a newspaper, his chant was "Read all about Television". The Square is the busiest place in town, I guess. They must have had thousands of them up there.

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758 Q. Did you ascertain to your satisfaction whether or not at the time of the distribution of that leaflet anything was being said or done by the persons distributing it to apprise the public receiving it that was being given out or related to a labor dispute? A. We ascertained that that is true, that they did not identify it with a labor dispute, yes, sir.

Q. And was that one of the circumstances that was presented to you at the time you made your decision? A. Yes, sir, on Monday.

Q. In discharging the men? A. Yes, sir.

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759 Recross Examination

Q. (By Mr. McCormick) Mr. Crutchfield, isn't it true that these technicians had been picketing in front of your office for about nearly two months at the time they

distributed this leaflet? A. They started early in July, as I recall.

Q. And they distributed this leaflet the latter part of August? A. Yes.

Q. Isn't it true that there was quite a bit of publicity in the local papers, pictures of the pickets, at the time? A. I don't recall seeing the pictures of the pickets in the local paper. I do recall having seen it in the Labor Journal, which I get.

Q. Well, isn't it true that the fact that there was a labor dispute going on between you and your technical employees was announced in the newspapers? A. Yes, sir, it was. I think one or two days.

Q. The Wilder Building is located on Tryon Street? A. Yes, sir.

Q. How far is that building from what is called the Square? A. It is two blocks, two city blocks.

Q. Tryon Street is one of the main streets in town, is it not? A. Yes, sir.

760 Q. And the Wilder Building is a downtown office building, it is in the downtown section, is it not? A. Right, yes, sir.

Mr. McCormick: I have no other questions.

Mr. Blakeney: That's all, Mr. Crutchfield.

Trial Examiner Martin: Mr. Crutchfield, there was no question in your mind, was there, but that General Counsel's 10-D was distributed in connection with the same labor dispute that the other handbills were distributed?

The Witness: Well, it was natural for me to assume that, because it was distributed by ten of the men whom I had seen picketing, yes, sir.

Trial Examiner Martin: And who had been passing out the other handbills?

The Witness: Well, I imagine all ten had. I hadn't seen them all passing out the others.

. . . . . .

Mr. Blakeney: Just a minute, was there question in your mind as to whether or not the public knew and understood or realized that Exhibit 10-D had any connection with the labor dispute which had been going on? A. Well, there definitely was, since as testified both by the prosecution and our side, what do you call us, Respondent? There was nothing said about a dispute when they were giving out this and there is nothing said on here
761 about a union or a dispute. I certainly believe very strongly and still believe that the people who received these things, many of them had no idea what it was about. Our technicians simply thought we were a sorry outfit.

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762 Mr. Blakeney: When you say "you believe that the public had or many members of the public had no realization of any connection between this and the labor dispute that had been going on, will you state whether or not you mean that is the conclusion you came to before you discharged the men?

763 The Witness: That is, Mr. Blakeney, because as a matter of fact I had many people call me and stop me on the street who had gotten these on the street and through the mail and asked me specifically what is was about.

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Mr. Blakeney: Had such persons up to that time known anything about or heard anything about any labor dispute?

The Witness: They had not. They asked me, said, "What is this your technicians are doing? Is your television really that bad? Why don't they like it?" And I would simply say, "Well, we are having a dispute."

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787 S. L. HICKS

recalled as a witness by and on behalf of General

Counsel, having been previously sworn, was examined and testified as follows:

Further Redirect Examination

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788 Q. Now Mr. Hicks, you are the business agent of this union? A. Yes, sir.

Q. IBEW, Local 1229? A. Yes, sir.

Q. And on September 2, 1949, how many members of that local worked for Jefferson Standard Broadcasting Company? A. Fifteen.

Mr. Blakeney: On what day?

Q. September 2, 1949, how many? A. Fifteen.

Q. Will you state the names of those fifteen? A. Stroupe, Sullivan, Hingle, Hill, Hilker, Richardson, Perkins, Hicks, Patterson, Sellars, Henderson, Painter,
789 Walker, Hickland, Flowers.

Q. Now on September 4, 1949, how many members of your local were employees of Jefferson Standard Broadcasting Company? A. Five.

Q. Will you give their names, please? A. Henderson, Walker, Hickland, Sellars, Painter.

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822 Trial Examiner Martin: This is a re-opened hearing in the matter of Jefferson Standard Broadcasting Company and International Brotherhood of Electrical Workers, AFL, Local 1229, Case No. 34-CA-170, before the National Labor Relations Board. The trial Examiner is Alba B. Martin, and the General Counsel is represented by Mr. Miles J. McCormick, and the Company is represented by Mr. Blakeney and Mr. Miller, all of whom appeared at the original hearing. I note that Mr. Pickens is not present for the General Counsel. Will he be here?

Mr. McCormick: No, Sir.

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824 (The documents heretofore marked Trial Examiner's Exhibits Nos. 1-A through 1-I for identification, were received in evidence.)

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825 Trial Examiner Martin: I will receive in evidence General Counsel's Exhibits 42-A and B.

(The documents heretofore marked General Counsel's Exhibits 42-A and B for identification, received in evidence.)

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826 HENRY F. ADAIR

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

827 Trial Examiner Martin: Give your name and address to the Reporter, please? A. Henry F. Adair, 500 Queens Road, Charlotte.

Q. (By Mr. McCormick) Mr. Adair, by whom are you employed? A. International Brotherhood of Electrical Workers.

Q. What is your position with that organization? A. International Representative on the staff of Vice-President Petty.

Q. As International Representative are you authorized to represent the International Brotherhood of Electrical Workers in respect to bargaining negotiations? A. Yes, sir.

Q. And as International Representative are you also authorized to represent any locals of the I.B.E.W.? A. Any local to which I am assigned, yes, sir.

Q. And are you assigned to Local 1229 of I.B.E.W.? A. Yes, sir.

Q. And as a representative assigned to I.B.E.W. Local 1229 did you at any time ever approach a representative of the Respondent, Jefferson Standard Broadcasting Company, with a request that they meet with you to discuss

negotiations looking forward to a contract between your organization and that Company? A. Yes, sir, I did, on several occasions.

828 Q. Will you tell the Trial Examiner when you met, with whom you met, what you said and what the answer was to your request? A. On March 6, 1950 I called at the office of WBT to see Mr. Crutchfield, and I was informed there that Mr. Crutchfield was not in his office, was out sick, but that he may be in later that day. From there I went to Mr. Blakeney's office, in the Johnston Building, and talked with Mr. Blakeney, and requested there that the Company resume negotiations between the Station and Local Union 1229; Mr. Blakeney said that he didn't know just what to say about it, that he would have to take it up with Mr. Crutchfield and let me know; he reminded me at that time that the hearing was set for the 13th, and I told him that I was aware of that, but I thought we could resolve the issues that would make the hearing unnecessary. Upon leaving Mr. Blakeney's office I told him I would be at my home within thirty-five or forty minutes after that and I would appreciate a call from him. Mr. Blakeney did not call, but Mr. Larry Walker called me about one-fifty or two o'clock that afternoon, and said he would have to take the matter up with Mr. Crutchfield, and that Mr. Crutchfield was out ill at that time; I informed Mr. Walker we were anxious to finish the case, get the negotiations under way and the contract in effect, but he again said he would have to take the matter up with Mr. Crutchfield, and I would hear either from Mr. Crutchfield or himself by letter or telephone. On March 7th I went to Mr. Walker's office and talked with him, it was about ten a.m., he

829 just restated what he told me the day before, more or less, that he would not do much on it until Mr. Crutchfield was able to get back to his office and work, but that he would talk it over with Mr. Crutchfield and would let me hear from him, either by telephone or by letter, they were making all efforts to have Mr. Crutchfield in position

to appear at the hearing on March 13, they didn't want to give him any extra work to keep him from being here. On March 13 I talked with Mr. Crutchfield in the lobby, in the hallway of this building, just outside the door, and requested that he resume negotiations; Mr. Crutchfield told me that this matter had been called to his attention by both Mr. Walker and Mr. Blakeney, but they had not been able to give it any consideration due to the work involved in preparing for the hearing. I asked Mr. Crutchfield at that time to talk further with Mr. Blakeney and Mr. Walker and to give me an answer that afternoon or the next morning at the latest; I didn't hear anything from that conference, if he had one, with Mr. Blakeney and Mr. Walker; and on March 22 I talked with Mr. Crutchfield in the hall of the County Court Building, Charlotte; I again asked him to resume negotiations with the Local Union; at that time he said he had really forgotten the matter, but that he would talk with Mr. Blakeney and let me know; at that time he asked what date would be satisfactory with us for a conference, and I told him at that time that any date that was satisfactory with him would be satisfactory to
830 us, we were ready and willing at any time to sit down and negotiate. Those are the only conversations I have had with the gentleman concerning negotiations. I did later file a charge.

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831 Mr. McCormick: I offer into evidence General Counsel's Exhibits 43-A and B, sir.

Trial Examiner Martin: Any objection? General Counsel's Exhibits 43-A and B are received in evidence.

(The documents heretofore marked General Counsel's Exhibits 43-A and 43-B for Identification, were received in evidence.)

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Cross-Examination

Mr. Blakeney:

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838 Q. How many of the persons who were working at WBT on March 6 were members of your Union?

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839 A. (The witness) I am not in position to answer that question due to the fact as representative of the 840 Local Union 1229 there are more people who are members of that organization than those that were employed or are employed by WBT. 1229 is the only local union for the radio technicians in this particular area; I think the next closest is Chattanooga, Tenn., and according to our constitution and by-laws the jurisdiction of a local Union extends halfway between its locality and the next local union, geographically speaking, and, therefore, I am not familiar with the people of 1229 or where they work, so I am not in position to answer the question.

Mr. McCormick: Just a minute, if you don't mind. I want to move to strike that question and also the answer. I point out to the Trial Examiner that which he can take Judicial notice of—34-CA-106, namely, that on May 9, 1949 I.B.E.W., Local 1229 was certified to represent the employees of this Company, and the Company, on May 13, which is exactly one year and four days later, questioned the majority status. Now, our legal theory being that the discharge of these employees in September, during the year of the certification, is a complete destruction of the majority status of the Union; I think that inasmuch as we concede the majority status had been lost by that time, basing our whole case upon the fact that unfair labor practices alleged, if proved, will also prove—inasmuch as—we will go so far as to concede that; I hardly think it is relevent to ask how many they did have.

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842 Q. (By Mr. Blakeney) Now, Mr. Adair, you say you don't know how many members were in the Union among the technicians and engineers who were working at WBT on March 6? A. I don't know of any

that were actually members of the Union that were working there March 6; and I am not positive that that answer is absolutely correct; as I say, I don't know all the members of Local 1229 or where they are employed.

Q. As far as you know, then, the Local 1229 of the International Brotherhood of Electrical Workers had no membership whatever among the men who were working at WBT on March 6? A. To the best of my knowledge that is correct.

Q. Now, other than the ten men whom the Com-
843 pany had discharged in September, 1949, there had been a number of the technicians who had been in the Union; that is correct, is it not? A. According to the terms of the agreement that was being amended or attempting, we were attempting to amend at the time of the discharge of those ten men all of the technicians could have been members of the organization. The agreement specified they could be, and so I suppose they all were, and, therefore, I would naturally conclude the ones that were not discharged were still members of the organization at that time.

Q. It is true, is it not, that on or about January 1, 1950 the Union had expelled from its membership all the technicians or engineers who were working, who were still then working at WBT; that is true, is it not? A. I can't say whether that is true for all of the people; I know there was some action taken against some members of the organization at that time, or around that time. I am not sure of that date.

Q. To expell them from the organization? A. That is correct, sir.

Q. And can you give us the approximate number who were so expelled? A. That would be purely a guess, Mr. Blakeney; I think probably—

Q. Six to eight? A. Four or five; maybe six, I am not sure.

844 Trial Examiner Martin: What was that approximate date?

Mr. Blakeney: January 1, 1950 is the date I asked him.

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Q. (By Mr. Blakeney) Well, now, Mr. Adair, so far as you know those who were expelled did include and covered all the technicians and engineers who were at that time, at the time of the expulsion, still working for WBT? A. So far as I know, yes, sir. Again I will have to remind you I don't know all the members of the organization.

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846 Q. (By Mr. Blakeney) Now, Mr. Adair, the ground for expulsion of the remaining members of the Union who were working as technicians or engineers of WBT, that ground, was it not, that they had crossed the picket line of the men who had been discharged? A. That was probably part of the grounds, Mr. Blakeney. I again would have to go back to the records that I don't have available to give a complete answer on that; the men were charged with a violation of the constitution of the I.B.E.W. and before a Trial Board they were found guilty, and the Trial Board assessed their punishment as expulsion; they had thirty days in which to appeal that to the Vice-President of the District, and they did not appeal it, and, therefore, their conviction stands

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853 STERLING HICKS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Q. (By Mr. McCormick) You are the same Mr. Sterling Hicks who previously testified in this hearing? A. Yes, sir.

Q. Mr. Hicks, what was your position, if any, with re-

spect to Local 1229? A. I was Business Manager of the Local Union.

Q. As Business Manager did you keep an accurate
854 check of the number of members that you have which were employed in any particular Company? A. Yes, sir.

Q. And as of September 3, 1949 how many members of Local 1229 were employed at Jefferson Standard Broadcasting Company within the unit described in case 34-R.C.-106? A. I had fifteen members and one supervisor, I think, total of sixteen.

Trial Examiner Martin: What was that date?

Mr. McCormick: September 3, 1949.

Q. Now, on September 3, 1949 how many of those employees were, how many employees of Jefferson Standard Broadcasting Company were within the unit described in case No. 34-R.C.-106? A. Approximately eighteen.

Q. There were eighteen technicians? A. To the best of my knowledge there were eighteen men employed there.

Q. That is excluding supervisors? A. That is excluding supervisors.

Q. Excluding announcers? A. Of course, that does not come under the jurisdiction of technicians.

Q. And of the eighteen you had as members on your books, fifteen; is that correct? A. Yes, sir.

855 Q. In addition to one Supervisor? A. He didn't come under the bargaining unit though.

Q. As of September 4th, when the Company attempted to discharge the technicians or a group of the technicians, as of September 4th how many members of your Union were presently working at Radio Station WBT and WBT, TV? A. Five members and one Supervisor.

Q. As of January 10th, 1950, how many members of Local 1229 were presently working at Radio Station WBT and WBT, TV? A. None.

. . . . . .

Cross Examination

Q. (By Mr. Blakeney)

. . . . . .

858 Q. Well, now, Mr. Hicks, you say by January 10th there were not any technicians or engineers working at WBT who belonged to Local 1229 of I.B.E.W.? A. That is right.

Q. Is that correct? A. Yes, sir.

Q. All of those who had not been, all of the members of the Union who had not been discharged by the Company had been expelled by the Union about the 1st of January, 1950; is that correct? A. Yes, sir.

Q. And how many was it who were thus expelled by the Union on or about January 1st? A. Six.

859 Q. Now, from January—well, do you recall more specifically the date of the expulsion; was it January 10 or January 1, or what? A. January 1.

Q. Now, from January 1, 1950, up to and including the present time, has Local 1229 of the I.B.E.W. had any members or membership among the technicians and engineers of the WBT—January 1st up to the present time? A. No, sir.

. . . . . .

MR. CHARLES H. CRUTCHFIELD

a witness called by and on behalf of the Company, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Blakeney) You are the same Mr. Crutchfield who testified in the hearing before? A. Yes,

860 sir.

Q. Mr. Crutchfield, you testified at the hearing in this case, March 13th to March 17th, to the effect that preceding the expiration of the last contract between the Company and the Union, that representatives of the Company and representatives of the Union negotiated in bar-

gaining for many days during January of 1949; did you not so testify? A. That is correct.

* * * * * * * * * *

860a Q. Did you thereafter receive a letter from Mr. Lee confirming the suspending of the negotiations on his part? A. Yes, sir, I did.

Q. Now, were bargaining negotiations resumed thereafter? A. On June 2nd the Union asked to resume negotiations.

Q. And were such negotiations resumed? A. Yes, sir.

* * * * * * * * * *

862 Q. So that the last suspension of negotiations between the parties was when? A. On July 8th, Saturday or Friday.

Q. Alright, now, from July 8, 1949 until March 6, 1950 what, if any, request or approach of any sort with respect to bargaining negotiations did the Company have from the Union? A. None whatsoever.

Q. Was any mention made by either party of undertaking further negotiations between July 8, 1949 and March 6, 1950? A. No, sir.

Q. What was, then, the first that you ever heard about the Union desiring to bargain further or again after July 8, 1949? A. Mr. Walker called me several days prior to the March 13th Labor Board hearing and told me Mr. Adair had requested a resumption of negotiations, and I was at home; as a matter of fact I didn't get back to the office for several weeks.

Q. You had got out of the office when and why? A. Well, an operation on February 14th, and I returned to the office on April 10th.

Q. What kind of operation did you have? A. Gall
863 Bladder removed.

Q. That was, you say when, February 14th? A. I went in the hospital on the 14th; the operation was on the 16th.

Q. And you were not in your office again until when? A. Until April 10th.

Q. Now, you say Mr. Walker did report to you shortly prior to the beginning of the hearing in this case here at the Federal Court Room on March 13th; he did report to you that Mr. Adair had requested further bargaining? A. Yes, sir.

Q. Did you see or talk with Mr. Adair at that time? A. No, sir, I did not; in fact I was not out of bed then, I was at home up until Monday the hearing started; I simply told Mr. Walker I would be glad to discuss it when I felt like it, when I recuperated.

Q. When was the first time you did see or speak to Mr. Adair of the matter? A. The day the Labor Board hearing opened here, March 13th; I saw Mr. Adair in the hall and he said he would like to get an answer about a time and a place and a date for negotiations; I told Mr. Adair—shall I continue? A. Yes, sir, go right ahead.

Q. I told him at that time that I had been informed of his request to Mr. Walker and to you, and that this
864 was my first day out of the house and I would have to think about it a little bit. As soon as this hearing was over I suggested he get in touch with us again and we would discuss it further.

Q. Now, at any time during the hearing here in the Federal Court House was the matter further mentioned, either by you to Mr. Adair or by Mr. Adair to you? A. No, sir; I think it came up while Mr. McCormick was cross-examining me; I think he asked me a question about negotiations, but not Mr. Adair; Mr. Adair didn't ask me anything about it.

Q. Now, when was the next time that you spoke to Mr. Adair or Mr. Adair to you about the matter? A. It was, I believe, on a Wednesday or Thursday of the following week.

Q. Where was that? A. At the Mecklenburg County Court House, in the corridor.

Q. In the corridor? A. Yes, sir.

Q. What was that conversation? A. He said he would like to know, again he said I would like for you to answer my question and name a time and place for these negotiations; and my answer was the same as my answer here; I did tell him at that time my doctor had recommended I go to Florida for a few weeks; and if he wanted to get in touch with us about it later we would be glad to discuss the matter with him; before leaving for Florida I
865 asked Mr. Walker to telephone me down there if Mr. Adair questioned him about the negotiations.

Q. Well, now, did you go to Florida? A. Yes, sir.

Q. When? A. March 24th.

Q. How long was that after talking to Mr. Adair at the County Court House? A. That must have been the next day. I left on Friday about four in the afternoon, and, as I recall, my conversation with Mr. Adair was on Thursday.

Q. Now, when did you come back from down there? A. I came back from Florida on April 9, Easter Sunday.

Q. Now, did he, either to you, while you were in Florida, or at any time, or to any other member of the Company, make any request about further bargaining, so far as you know? A. No, sir.

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873 Re-direct Examination

Q. (By Mr. Blakeney)

* * * * * * * * * *

874 Mr. Crutchfield: On or about September 6, or any time after the ten men were discharged, did the Union at any time get in touch with the Company and say in substance that the Union desired to commence
875 bargaining again upon the terms of the contract? A. No, sir.

Q. Did the Union at any time do that between July 8, 1949 and March 6, 1950? A. Other than the two instances that I mentioned, where Mr. Adair requested —

Q. Well, that was after March 6, 1950, wasn't it? A. Yes, sir, it was.

Q. Did you hear anything further from the Union in regard to that telegram after they sent you the telegram? A. No, sir.

Q. Did anybody connected with the Union get in touch with you and say anything to the effect that whether you re-instated the ten men or not they wanted to bargain about the contract? A. No, sir.

* * * * * * * * * * *

877 LARRY WALKER

a witness called by and on behalf of the Company, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Blakeney) Mr. Walker, do you recall when Mr. Adair, on or about March 6 or thereafter, came to see you and talked with you? A. Yes, sir, Mr. Adair came to my office on March 6th.

Q. You saw him—did you see him on that day? A. I beg your pardon, sir, I talked to Mr. Adair by telephone on March 6th and I saw him the following day, March 7th, I believe it was. I know that I called him two or three times in the morning and the line did not answer, and I got him some time during the middle of the day on March 6th, and I saw him, I believe, on the next day in my office.

Q. Substantially what was the conversation between you and Mr. Adair on the telephone? A. I called Mr. Adair to tell him that Mr. Crutchfield was recuperating from an operation and had not taken up any phase of the

878 Company's business whatsoever, was not able to yet, and Mr. Crutchfield was not physically able to discuss any resumption of bargaining, and that Mr. Crutchfield or I would get in touch with Mr. Adair at a later date.

Q. Did you see Mr. Adair the next day? A. I believe it was the next day, Mr. Adair came into my office the next morning, and it was my impression it was the next day;

actually the conversation which took place the next day was practically a repetition of the same thing; I don't remember any difference at all in the two conversations.

Q. And from the time that Mr. Crutchfield did talk with Mr. Adair on one occasion here in the corridor of this building, and on a little later occasion in the corridor of the County Court House, from then on what contact, if any, did you have with Mr. Adair, or any representative of the Union? A. None whatsoever.

Q. Did Mr. Crutchfield tell you anything about getting in touch with Mr. Adair or waiting for contact with Mr. Adair, when he, Mr. Crutchfield, left for Florida the day after he spoke to Mr. Adair in the County Court House? A. Actually Mr. Crutchfield told me the afternoon he left for Florida—the last time I saw him was in the County Court House.

Q. What did he say? A. And told me if Mr. Adair contacted, attempted to contact him or to contact
879 me to write him—would I please get in touch with him and let him know during his absence, because we didn't know at that time how long Mr. Crutchfield would be gone.

Q. Did he say anything about you or any other representative of the Company getting in touch with Mr. Adair? A. No, sir, my understanding from Mr. Crutchfield was that Mr. Adair was to get in touch with us, or with him rather, since we could not do anything in that order.

Q. Now, did Mr. Adair or any other representative of the Union get in touch with you in any way from then on? A. No, sir, that is the last contact we have had.

Q. Did they get in touch with any other representative of the Company, so far as you know? A. Not to my knowledge.

Q. Now, there was some testimony here this morning in regard to the number of technicians who were working for the Company at that time, or I mean preceding the time when the ten men were discharged; how many technicians

were working for the Company at the time immediately preceding the discharge? A. Twenty-two, I think, is the correct number, Mr. Blakeney.

* * * * * * * * * * *

886 Re-Cross Examination

Q. (By Mr. McCormick) Did you ever call Mr. Adair—you know Mr. Adair? A. I called Mr. Adair on March 6th and talked to him some time in the middle of the day by phone.

Q. And every other time he has talked with you he has said he would call you back? A. He came to my office the next day.

Q. He came to your office the next day? A. Not by appointment exactly; he just came in and I was there. I have not had an appointment with Mr. Adair or discussed this with him since then.

Q. That is the last time, March 6th? A. March 7th, I believe he came to the office; it might have been March 8th; I think it was March 7th.

Q. But you called him yourself on March 6th? A. That is right.

Q. You tried three or four times? A. I did.

Q. You clearly understood on March 6th that he expected a reply? A. Yes, sir.

Q. That is a telephone message? A. Certainly.

887 Q. And you have not had anything to do with it except March 7? A. I have not discussed it with him; I have not seen the gentleman; except here.

Q. And all you know is what Mr. Crutchfield told you? A. That is right; I have talked with no one else about it.

* * * * * * * * * * *

Re-Cross Examination

Q. (By Mr. McCormick) Just one or two more questions, Mr. Walker, please, sir. When you talked with Mr.

888 Crutchfield, would you mind going over that conversation—with Mr. Adair on the 7th, would you

mind going over that conversation, as well as you can recall it? A. As I said a few moments ago, the conversation on the 6th and the 7th, I remember distinctly telling Mr. Adair, on the 6th Mr. Crutchfield was recuperating from an operation and had not taken over any part of the operation, had not even contacted the operation any way at all up to that point, and the first date he was attempting to make was the following Monday, the 13th, which was the date of the National Labor Relations Board hearing, and I told Mr. Adair that as soon as I could I would discuss it with Mr. Crutchfield and one of us would get in touch with him.

Q. That was March 7th? A. That was the telephone conversation, and—

Q. And you told him on the 7th you would get in touch with him?

Mr. Blakeney: Let him finish.

Q. (The witness) I told him that when I telephoned him on March 6th. I stated awhile ago what Mr. Adair and I discussed in the office was basically the same, no new points were covered, we covered the same points we covered the day before.

Q. (By Mr. McCormick) But you promised to get in touch with him as soon as Mr. Crutchfield had recovered from his illness? A. That is right; and the next
889 time I saw Mr. Adair and Mr. Crutchfield they were together in the corridor in this hall.

Q. You did see Mr. Crutchfield and Mr. Adair in touch with each other? A. They were standing out there talking; I was not in the group, but I saw them out there talking.

* * * * * * * * * * *

CHARLES H. CRUTCHFIELD, Re-called

Direct Examination

* * * * * * * * * * *

890 Q. (By Mr. Blakeney) I hand you here a paper writing, Respondent's Exhibit 23 for identification, and ask you if that is a copy of a letter, copy of which was also received by you relating to the bargaining negotiations that were going on in January, 1949, betwixt the Company and the Union? A. Yes, sir.

Trial Examiner Martin: What is the date of that?

Mr. Blakeney: That is January 14, 1949, sir.

* * * * * * * * * *

891 Mr. McCormick: I feel that I must object to Respondent's exhibit just immediately entered for the reason that the General Counsel concedes that all bargaining prior to September 3rd, 1949, when the Company discharged the employees named in the original complaint, and all amended complaints, engaged in collective bargaining with the Union in good faith; General Counsel is not attempting to show that the Company was engaged in bad faith bargaining prior to the telegram of September 6th; and inasmuch as the General Counsel concedes good faith bargaining at the period during which this letter was written, it would seem this letter here is only cluttering up the files; I object to it because it is irrelevant and it is shown already whatever that can go to prove.

* * * * * * * * * *

892 Mr. Blakeney: The only sense in which we claim it is pertinent is this, Mr. Examiner: We do understand, as Mr. McCormick says, that no contention is being made on his side but that this Company did bargain in complete good faith up until the time of the discharge. In other words, it is our understanding that they do concede that, and if conceded we are glad to have that now confirmed.

Mr. McCormick: I think that needs no confirmation inasmuch as I reiterated it time after time after time in the original hearing in this matter; I had always conceded good faith of the Company in bargaining up to the point of the

discharge. The hearing here was for the purpose of adducing evidence of things that occurred since the hearing and not what happened back in 1949, except as it obtains to September 3rd and later; we have always conceded good faith of the Company in the negotiations that took place.

Mr. Blakeney: Well, I will say as to that, Mr. Examiner, whether Mr. McCormick always conceded that was not entirely clear in the first hearing, because it seems to me that in the first hearing at various points he was condemning the bad faith attitude and sinister planning of the Company; but however that may be, we have it clear now; that is all now; there is no contention of bad faith up to the time of the discharge; therefore, what went on in
893 bargaining is pertinent only in this sense, even though he is not contending that we acted in bad faith in that bargaining, we want to show that through good faith bargaining an impasse was reached, a point was reached where both sides said we can't get together, you won't agree to this and you won't agree to that, and an impasse has been reached.

Mr. McCormick: It is so stipulated; name the date.

Mr. Blakeney: Well, July 8th.

Mr. McCormick: We so stipulate it.

. . . . . .

896 Mr. McCormick: I would like to say just this last word; and that is that I fully concur with Mr. Blakeney's theory of this case, namely, that if the Company is guilty of no wrong doing on September 3rd our complaint should be dismissed in toto.

Mr. Blakeney: Bargaining and everything else?

Mr. McCormick: Everything else.

Mr. Blakeney: Now, we are together on the theory of the case.

. . . . . .

902 Cross-Examination

Q. (By Mr. McCormick) Mr. Crutcnfield, you state that from March, no, from July until March, 1949 and 1950, you heard nothing from the Union; is that correct, except the telegram of September 6th? A. That is correct, yes, sir.

Q. Now, you have testified here previously that at one time you went to New York; do you recall when you went to New York? A. Not exactly, no, sir.

Q. But it was some time before you discharged all of these people; isn't that correct? A. I believe I was there once before and once after the discharge.

Q. You testified, at least, that one time you went
903 to see a Mr. Wimberly; do you recall— A. That is correct.

Q. Did you see him before or after the discharge? A. I saw him before the discharge, and also saw him once after the discharge.

Q. While it is true the Union did not contact you, you did go so far as to contact the International representative of the Union, didn't you? A. Yes, sir; I was anxious to get this thing solved if it was possible to do so.

Q. But you did make an attempt up there to solve the question with Mr. Wimberly, didn't you? A. Well, I thought we were both attempting to solve it, yes, sir.

Q. So, it is not altogether exactly the entire history of the defense that the Union never contacted the Company, inasmuch as you took the initiative and contacted the Union yourself? A. Mr. Wimberly is the head of the Union, but not the man designated to make those arrangements, as I understand it.

Q. Other than to get Mr. Wimberly to accept a subsidy for firing Mr. Hicks out of your employment; did you have any other reason in going to see Mr. Wimberly than to settle this matter? A. Repeat this question?

Mr. Blakeney: Mr. Examiner, I believe we are

904 getting into matters that have been covered in the former hearing there.

Mr. McCormick: On the contrary, sir, here a witness comes out and says that the Union never got in touch with them; I am trying to show that the Union and the Company have been meeting from time to time, twice in September, not here locally, but, up in Washington.

Mr. Blakeney: What he testified was there was no more bargaining, nor no more requests from the Union to bargain.

Mr. McCormick: I am trying to show, sir, that he went to the Union and was willing to sit down and bargain with them.

Trial Examiner Martin: Well, I think the old record went quite thoroughly, from Mr. Crutchfield's point of view, into his first meeting with Mr. Wimberly before the discharge.

Mr. McCormick: Fairly, although I can recall it explicitly.

Trial Examiner Martin: Are you now going into the second conversation with Mr. Wimberly?

Mr. McCormick: I want to go into the first one, except he wanted to go into this deal and get Hicks out of the way.

Mr. Blakeney: What I want to inquire about, if he did have a discussion with Mr. Wimberly, as he stated in the first hearing he did have, and you concede they were bargaining in good faith all along, how would it have any bearing on the bargaining issue?

905 Mr. McCormick: It goes to show his recollection, his memory; and I won't say it goes to test his veracity, but I have sat right here today and heard that he had heard nothing from the Union from March, 1949 or July, 1949 to March 1950, and I can prove it, and have just done so; as a matter of fact, Mr. Crutchfield was in the Union's International Office in Washington, D. C., so it is not altogether true.

Trial Examiner Martin: I will permit you to go into this

to see if you can distinguish which of the two conversations we are talking about, so that we can get the record straight on that.

Mr. Blakeney: May I just add I object, of course, to your ruling, Mr. Examiner; but I think Mr. McCormick is not exactly quoting Mr. Crutchfield's morning testimony quite right. What Mr. Crutchfield testified this morning, as I understand and understood, was this, he was saying from July 8th to March 6th the Union never sought bargaining from the Company, never tried to re-open bargaining, never called us in to bargain, nor ever made any approach for that purpose.

Mr. McCormick: That reminds me of the time when I was in law school studying common law pleading; we studied the negative pregnant, namely you were accused of having three daughters, you denied it, you had four. I mean, the question is not whether one got in touch with the other; I am going to show that the Union did, not only the Union, but the Company, prior to September 1st made an attempt to get together again; to refresh Mr. Crutch-
906 field's recollection—

Trial Examiner Martin: Read that last question, please, Mr. Reporter.

(The question was read as follows:

"Q. Other than to get Mr. Wimberly to accept a subsidy for firing Mr. Hicks out of your employment; did you have any other reason in going to see Mr. Wimberly than to settle this matter?").

Trial Examiner Martin: Did you understand that question?

The Witness: Yes, sir, I did so.

Trial Examiner Martin: You may answer it. Objection overruled. A. I had no intention of substituting a subsidy; I had no intention of discussing Mr. Hicks when I went to see Mr. Wimberly.

Q. (By Mr. McCormick). I am not interested in the

discussion concerning Mr. Hicks, which has already been testified about; but my question is: Do you recall your conversation with regard to the impasse reached, concededly reached between you and the Union and the— A. You mean my discussion with Mr. Wimberly?

Q. Yes, sir. A. Yes, sir, I was in Washington and I was anxious to get this matter cleared up if I could. We were trying to reach some kind of agreement. Mr. Lee had not been successful, Mr. Thompson had not been; I thought possibly Mr. Wimberly could offer some suggestion
907 that might be helpful; I didn't go in to negotiate with him, because he was not designated as the man to negotiate. I went to discuss the problems with him and see if he had any ideas as to what we might do in order to get back down to negotiations. I told him negotiations had been broken off by the Union and by Mr. Lee; went through the history of the case, probably all of it; I told him Mr. Lee's threat to file charges against us if we discharged anybody for any reason. Referring to Mr. Hicks, it was not I, but Mr. Wimberly, who brought that suggestion up, that probably if we took Mr. Hicks away we could get the thing straightened out. That was about the extent of the conversation. I didn't consider it, nor, I am sure, Mr. Wimberly didn't consider that as negotiations; and in addition continuing with the answer to your question—

Q. Yes, sir, go ahead. A. As I understand it here we are being accused of unfair labor practice on the basis, as you say, we refused to bargain. Does that indicate we have refused to bargain, if in fact, I was bargaining with Mr. Wimberly? Doesn't that refute the claim you have made against the Company, the charge, if I instigated a conversation with Mr. Wimberly?

* * * * * * * * * *

Now, you say you went there one more time? A. I believe I did go—No, I didn't go, I called him Sunday morning after we discharged the men on Saturday. I called him Sunday to tell him what we had done and why; and he says:

908 "I don't blame you, I would have done the same thing"; he said: "I am sorry you had to fire 10; we could have taken care of a few."

Q. Now, you have testified here that you talked with Mr. Adair here in the Charlotte Post Office on the 13th, that was the first morning of the hearing? A. I believe it was the first morning.

Q. And you told him you were ill and you had just gotten out of bed? A. Yes, sir.

Q. And the hearing was going on; and how did you leave after the hearing? A. Well, Mr. Adair, I think—I neglected to mention this this morning: Mr. Adair said it is very urgent we get an answer from you this afternoon; and I said well we are tied up in this labor hearing and I don't know whether I will be able to be here all day or not, but I said get in touch with me later and I will probably be alright later on after this thing is over.

Q. You gave no indication of when later was? A. No, sir; but I did see him approximately a week later at the Court House and went over and spoke to him, and whether he brought up the subject or whether I brought it up, I don't remember; I believe he brought it up that second time, and I told him then that I had been ordered, or
909 it had been suggested by my doctor that I go to Florida and rest awhile; and well as I recall he said, or he asked when I expected to be back; and I said I don't know, probably in a couple or weeks or so, and get in touch with me then; and that is all that was said.

Q. You had no definite date to return from Florida? A. No, sir, I didn't know when I would get back.

Q. And you expected Mr. Adair to keep calling Mr. Walker or keep calling to discover when you would return? A. No, sir, since we had had no request for about six or eight months to negotiate, I didn't think that it would make a lot of difference whether he did it immediately or not.

Q. You didn't think he was very serious any way, did you? A. I didn't think he was serious?

Q. Yes, sir. A. No, sir, I didn't think he was serious; I thought he was trying to hook up another charge to put on top of the other one, that is all; I didn't know much about it legally, but the fact he asked to negotiate for the first time in six months exactly a week before the hearing was to start, indicated what he wanted was more of the kind of stuff that is being thrown at us here now.

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910 Re-Direct Examination

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912 Trial Examiner Martin: Anything further, Mr. McCormick?

Mr. McCormick: Nothing, sir.

Trial Examiner Martin: Do the parties wish to make any oral argument?

Mr. McCormick: I would like to state the position of the General Counsel.

Trial Examiner Martin: Yes, sir.

Mr. McCormick: The General Counsel urges that the Company has refused to bargain, and has offered proof thereof; the Company's questioning of a majority status of the Union one year and four days following the certification period, the certification date; during the certification year, after an impasse concededly in good faith has been reached, the Company on September 3rd discharged 10 union members who had engaged in concerted activities in an attempt to encourage the employer and Respondent to see according to its particular light.

* * * * * * * * * * *

915 The General Counsel concedes unless the discharges are legal, the Order of the National Labor Relations Board could not avail; but if it is illegal, it is a violation of the Company's obligation to bargain in good faith with the majority of the employees;

* * * * * * * * * * *

954 Exhibit No. G. C. 2-A

AM WBT FM
JEFFERSON STANDARD BROADCASTING COMPANY
WILDER BUILDING CHARLOTTE 2, N. C.

Charlotte 3-8833

CHAS. H. CRUTCHFIELD
Vice-President and General Manager

September 3, 1949

Mr. S. J. Sullivan
2147 Avondale Avenue
Charlotte
North Carolina

Dear Mr. Sullivan,

When you and some of our other technicians commenced early in July to picket against this Company, we felt that your action was very ill-considered. We were paying you a salary of $117.00 per week, to say nothing of other benefits which you receive as an employee of our Company, such as time-and-a-half pay for all work beyond eight hours in any one day, three weeks vacation each year with full pay, unlimited sick leave with full pay, liberal life insurance and hospitalization, for you and your family, and retirement and pension benefits unexcelled anywhere. Yet when we were unable to agree upon the terms of a contract with your Union, you began to denounce us publicly as "unfair".

And ever since early July while you have been walking up and down the street with placards and literature attacking us, you have continued to hold your job and receive your pay and all the other benefits referred to above.

Even when you began to put out propaganda which contained many untruths about our Company and great deal

of personal abuse and slander, we still continued to treat you exactly as before. For it has been our understanding that under our labor laws, you have a very great latitude in trying to make the public believe that your employer is unfair to you.

Now, however, you have turned from trying to persuade the public that we are unfair *to you* and are trying to persuade the public that we give inferior service *to them*. While we are struggling to expand into and develop
955 a new field, and incidentally losing large sums of money in the process, you are busy trying to turn customers and the public against us in every possible way, even handing out leaflets on the public streets advertising that our operations are "second-class", and endeavoring in various ways to hamper and totally destroy our business. Certainly we are not required by law or common sense to keep you in our employment and pay you a substantial salary while you thus do your best to tear down and bankrupt our business.

You are hereby discharged from our employment. Although there is nothing requiring us to do so, and the circumstances certainly do not call for our doing so, we are enclosing a check payable to your order for two weeks' advance or severance pay.

Very truly yours,

Jefferson Standard Broadcasting Company

By: CHARLES H. CRUTCHFIELD
Vice President

Enclosure

972 Exhibit No. G. C. 2-J

AM WBT FM
JEFFERSON STANDARD BROADCASTING COMPANY
WILDER BUILDING CHARLOTTE 2, N. C.

Charlotte 3-8833

CHAS. H. CRUTCHFIELD
Vice-President and General Manager

September 3, 1949

Mr. Leonard Flowers
Ranlo Station
Gastonia, N. C.

Dear Mr. Flowers,

When you and some of our other technicians commenced early in July to picket against this Company, we felt that your action was very ill-considered. We were paying you a salary of $85.50 per week, to say nothing of other benefits which you receive as an employee of our Company, such as time-and-a-half pay for all work beyond eight hours in any one day, unlimited sick leave with full pay, liberal life insurance and hospitalization, for you and your family, and retirement and pension benefits unexcelled anywhere. Yet when we were unable to agree upon the terms of a contract with your Union, you began to denounce us publicly as "unfair".

And ever since early July while you have been walking up and down the street with placards and literature attacking us, you have continued to hold your job and receive your pay and all the other benefits referred to above.

Even when you began to put out propaganda which contained many untruths about our Company and great deal

of personal abuse and slander, we still continued to treat you exactly as before. For it has been our understanding that under our labor laws, you have a very great latitude in trying to make the public believe that your employer is unfair to you.

Now, however, you have turned from trying to persuade the public that we are unfair *to you* and are trying to persuade the public that we have inferior service *to them*.

While we are struggling to expand into and develop 973 a new field, and incidentally losing large sums of money in the process, you are busy trying to turn customers and the public against us in every possible way, even handing out leaflets on the public streets advertising that our operations are "second-class", and endeavoring in various ways to hamper and totally destroy our business. Certainly we are not required by law or common sense to keep you in our employment and pay you a substantial salary while you thus do your best to tear down and bankrupt our business.

You are hereby discharged from our employment. Although there is nothing requiring us to do so, and the circumstances certainly do not call for our doing so, we are enclosing a check payable to your order for two weeks' advance or severance pay.

Very truly yours,

Jefferson Standard Broadcasting Company

By: CHARLES H. CRUTCHFIELD
Vice President

Enclosure

974 Exhibit No. G. C. 3

WBT WOULD LIKE FOR YOU TO LOOK AT THE RECORD

Jefferson Standard Broadcasting Company

Nowadays people are hearing so much about labor disputes that we have for some time refrained from saying anything publicly in regard to the attacks which are being made against us by a few individuals formerly in our employment. However, these persons are so persistently circulating leaflets, letters and other propaganda against our Company, the Jefferson Standard Broadcasting Company, that we feel we should not continue to let their statements go unchallenged.

We would like it to be known, in the first place, that with the great bulk of our employees we have no dispute or disagreement or controversy of any sort. They are pleased with their wages and all the other circumstances and conditions of their employment. Our relations with them are completely satisfactory.

The trouble we are having is with some of the men who worked for us as technicians, the highest paid group in our employment. Back in the early part of this year we were negotiating with a local chapter of the International Brotherhood of Electrical Workers Union, representing these technicians, and trying to work out the terms of a new contract with them.

Disagreement arose principally over the fact that our Company as employer considered that it should have the right to decide when and whether a man was or was not a satisfactory employee. The Union insisted that an outside arbitrator should have the power to veto and overrule our decisions with respect to such matters.

Because of our failure to agree upon this, some of these technicians commenced the early part of July to picket in front of the building where our studios and offices are located—carrying placards and handing out leaflets denouncing our Company as "unfair" to them. Despite this action on their part we continued to keep them in our employment and kept on paying them their regular wages.

A few weeks thereafter *some* of these men took a new course, and instead of continuing to declare us unfair to them, began to proclaim to our customers and to the public that our Company operates a very inferior business. They not only sought to drag us down in this way but even went so far as to ask the Federal Communications Commission to revoke our television license, so as to put us completely out of business in that field.

Would you feel like keeping a man in your employment and paying him while he did his best to destroy your business? That is the case and all there is to the case.

We feel that these men acted very wrongfully and that what they did was wholly without justification. We paid some of them $115.50 per week and over all they averaged $98.50 per week. They had three weeks vacation with pay each year, unlimited sick leave with pay, hospital, medical, life and family insurance and retirement pensions unexcelled anywhere.

All such employee benefits we have been keeping up on a higher and higher level while struggling at the same time against tremendous difficulties to establish in this section the very complicated and costly operations of television—*have meantime announced to the public over and over that it would take time before our service in this new field would be all that either we or the public might desire.*

In spite of these facts the men in question, while on our payroll, did all they could to undermine our television oper-

ation. If any employer was ever justified in discharging employees, we were.

Should you like to go into this matter or discuss it with us in greater detail, we will be glad to do so at any time.

Jefferson Standard Broadcasting Company

Nov. 1, 1949

975 Exhibit No. G. C. 4-A

WESTERN
UNION

Mr. Charles Crutchfield Sept. 6, 1949
Jefferson Standard Broadcasting Co.
Wilder Building, Charlotte, N. C.

As the representative of I.B. of E.W., Local Union No. 1229, Charlotte, North Carolina, in the dispute with Radio Station WBT regarding terms of a collective bargaining agreement to cover Technicians and Engineers, over which you have, in the opinion of the Union, unlawfully discharged ten Charlotte citizens from their jobs I propose that instead of the Union filing unfair labor practices charges against the Jefferson Standard Broadcasting Company with the National Labor Relations Board of Washington, D. C. that the following steps be taken to resolve the matter; (1) All technicians discharged to be returned to their former position immediately without discrimination or prejudice. (2) Question of whether or not the discharges are warranted be submitted to an impartial arbitrator designated by Governor Kerr Scott of North Carolina. The Union agrees to accept as final the decision of the impartial arbitrator. (3) Upon settlement of the discharge questions, the parties shall enter into collective bargaining conferences, in good faith, to reach an understanding on all points in dispute. In the meanwhile all picketing of the studios of WBT by the Union will be discontinued.

John A. Thompson
International Representative
I.B. of E.W.

Mecklenburg Hotel

976 Exhibit No. G. C. 4-B

WESTERN
UNION

LD43 NL PD

Charlotte NCar Sep 6 1949

John A Thompson

International Representative IBEW Mecklenburg Hotel
Charlt

Re your telegram. We discharged the ten men you refer to for just and compelling reasons and we are not willing to have them back in our employment. Our understanding is that National Labor Relations Board is set up by law as proper agency to inquire into this matter.

Jefferson Standard Broadcasting Company

Charles H. Crutchfield

5TOP

978 Exhibit No. G. C. 6

WBTV

CHARLOTTE, NORTH CAROLINA

Established 1949

The Television Operation
of
JEFFERSON STANDARD
BROADCASTING COMPANY

Telephone
3-8833

Business Office
Wilder Building, Charlotte, N. C.

Studios and Transmitter
Spencer Mountain, Gaston County, N. C.

RATE CARD NO.
2

Effective November 1, 1949

This rate card is published for the convenient reference of advertisers and agencies and is not to be considered as an offer of facilities

GENERAL INFORMATION

1. Frequency — Power — Time

Effective radiated power:
Video—16,300 watts
Audio—8,200 watts

Frequency—60-66 megacycles; channel 3

Antenna height 1135 feet above average surrounding terrain

Regular operating schedule: 12 noon to 10 PM; subject to change without notice

Network affiliation: CBS, NBC, ABC and Dumont

2. Commercial Time Allotment:

NAB Standards

3. News Services:

Complete wire services

Daily picture features

4. Music Clearance:

Rates include music copyright license fee

5. Talent and Production:

Cost of talent and services of Program and Production department submitted on request

6. Transcriptions:

Equipped to handle 33-1/3 and 78 rpm vertical and lateral transcriptions. Phonograph records and transcriptions acceptable. RCA equipment used.

7. Transcription Library Services:

Associated; World

8. Technical Equipment:

Two 16 mm film projectors

2" x 2" slide projector

Multiscope

9. Foreign Languages:

Not available

10. Unacceptable Products:

No liquor; beer and light wines acceptable subject copy approval and program content.

11. Political telecasts:

One-time, open rate commissionable. Programs of five minutes or more only. Sale of political time subject to standard conditions in effect on WBT.

Details on request.

12. Commissions and Discounts:

Agency commission of 15% of station time to recognized agencies

Invoices rendered and payable weekly unless specific other arrangements made in advance.

No cash discount

Broadcasts under Section One may not be combined with broadcasts under Section Two, and vice versa, to obtain lower frequency rates

13. Contract Requirements:

All contracts subject to renewal at the end of 52 weeks Effective with contracts dated on or after October 1, 1949, all rates are guaranteed for duration of contract up to 26 weeks from effective date of any increase

Contracts subject to cancellation on two weeks written notice

Cancelled contracts subject to short rate

14. Closing time:

All commercial material must be received 72 hours before telecast time.

15. MULTISCOPE TELECASTING SERVICES AVAILABLE. RATES ON REQUEST.

Section One

PROGRAM RATES
(film only)

Length of Broadcast (Minutes)	Per Broadcast 1 Time	26 Times	52 Times	104 Times	208 Times
Class "A": Monday through Friday 6 P. M. to 11 P. M.; Saturday, Sunday 12 Noon to 11 P. M.					
60	$175.00	$166.25	$157.50	$153.12	$148.75
40	$140.00	$133.00	$126.00	$122.50	$119.00
30	$105.00	$ 99.75	$ 94.50	$ 91.87	$ 89.25
20	$ 87.50	$ 83.12	$ 78.75	$ 76.56	$ 74.37
15	$ 70.00	$ 66.50	$ 63.00	$ 61.25	$ 59.50
10	$ 61.25	$ 58.19	$ 55.12	$ 53.59	$ 52.06
5	$ 52.50	$ 49.87	$ 47.25	$ 45.94	$ 44.62
Class "B": All other periods					
60	$105.00	$ 99.75	$ 94.50	$ 91.87	$ 89.25
40	$ 84.00	$ 79.80	$ 75.60	$ 73.50	$ 71.40
30	$ 63.00	$ 59.85	$ 56.70	$ 55.12	$ 53.55
20	$ 52.50	$ 49.87	$ 47.25	$ 45.94	$ 44.62
15	$ 42.00	$ 39.90	$ 37.80	$ 36.75	$ 35.70
10	$ 36.75	$ 34.91	$ 33.07	$ 32.16	$ 30.24
5	$ 31.50	$ 29.92	$ 28.35	$ 27.56	$ 26.77

Section Two

ANNOUNCEMENT RATES
(slide or film only)

Class "A": Monday through Friday 5:59 P. M. to 11 P. M.; Saturday, Sunday 11:59 A. M. to 11 P. M.					
1 Minute or less	$ 35.00	$ 33.25	$ 31.50	$ 30.62	$ 29.75
Class "B": All other periods					
1 Minute or less	$ 21.00	$ 19.95	$ 18.90	$ 18.37	$ 17.85

STATION PERSONNEL

President
J. M. Bryan

Vice President & General Manager
Chas. H. Crutchfield

Asst. Gen'l. Manager and Director of Television
Larry Walker

General Sales Manager
Keith S. Byerly

Local Sales Manager
Wallace J. Jorgenson

Promotion Manager
J. Robert Covington

Chief Engineer
M. J. Minor

REPRESENTATIVES

RADIO SALES

485 Madison Avenue
New York City

410 North Michigan Avenue
Chicago, Illinois

6121 Sunset Boulevard
Hollywood, California

Palace Hotel
San Francisco, California

902 Fisher Building
Detroit, Michigan

Suite 903
63 South Main Street
Memphis, Tennessee

979 Exhibit No. G. C. 7

CHARLOTTE, N. C.

AUGUST, 1949

WBTV

Channel 3

How About Fall and Winter Programs?

We at WBTV realize that our summer schedule has not been all that was desired. Therefore, we are distributing this new fall-winter schedule in order to acquaint the public with the star-studded programs to be Telecast by WBTV during the 1949-50 season starting late next month.

MONDAY

6:30 P. M.	Lucky Pup	(IPANA)
6:45 P. M.	WBTV Telenews	
7:00 P. M.	Kukla, Fran & Ollie	(RCA VICTOR)
7:30 P. M.	To be announced	
8:00 P. M.	Silver Theatre	(INTERNATIONAL SILVER)
8:30 P. M.	Who Said That?	(CROSLEY)
9:00 P. M.	Jinx Falkenberg and Tex McCrary	(PHILIP MORRIS)
9:30 P. M.	The Goldbergs	(GENERAL FOODS)
10:00 P. M.	Studio One	(WESTINGHOUSE)
11:00 P. M.	Sign Off	

TUESDAY

6:30 P. M.	Lucky Pup	(IPANA)
6:45 P. M.	WBTV Telenews	
7:00 P. M.	Kukla, Fran & Ollie	(RCA VICTOR)
7:30 P. M.	Ed Wynn Show	(SPEIDEL)
8:00 P. M.	Milton Berle Show	(TEXACO)
9:00 P. M.	We The People	(GULF OIL COMPANY)
9:30 P. M.	Life of Riley	(PABST BLUE RIBBON)
10:00 P. M.	Sign Off	

WEDNESDAY

6:30 P. M.	Lucky Pup	(IPANA)
6:45 P. M.	WBTV Telenews	
7:00 P. M.	Kukla, Fran & Ollie	(RCA VICTOR)
7:30 P. M.	Uncle George	
7:45 P. M.	Paradise Isle	
8:00 P. M.	Arthur Godfrey & His Friends	(CHESTERFIELD)
9:00 P. M.	Ed Dunninger Show	(BIGELOW CARPETS)
9:30 P. M.	The Clock	(LEVER BROS.)
10:00 P. M.	Sign Off	

THURSDAY

6:30 P. M.	Lucky Pup	(IPANA)
6:45 P. M.	WBTV Telenews	
7:00 P. M.	Kukla, Fran & Ollie	(RCA VICTOR)
7:30 P. M.		
8:00 P. M.	Olsen & Johnson Show	(BUICK)
9:00 P. M.	Crusade in Europe	(TIME-LIFE)
9:30 P. M.	Sign Off	

FRIDAY

Exhibit Torn Here		(IPANA)
6:45 P. M.	WBTV. Telenews	
7:00 P. M.	Kukla, Fran & Ollie	(RCA VICTOR)
7:30 P. M.	To be announced	
8:00 P. M.	I Remember Mama	(GENERAL FOODS)
8:30 P. M.	Camel Cigarette Show	(No program decision as yet) (CAMEL)
9:30 P. M.	Ford Theatre	(FORD DEALERS)
10:00 P. M.	Sign Off	

SATURDAY

6:30 P. M.	Sports Program	
6:45 P. M.	WBTV Telenews	
7:00 P. M.	Hopalong Cassidy	(ADMIRAL)

8:00 P. M.	Ken Murray's Blackouts (Murray has just completed 11 year run, uninterrupted, at theatre in Hollywood. Program will be variety type such as Berle.)
9:00 P. M.	Television Theatre (Currently on WBTV Friday from 8:00-9:30 P. M.)
10:30 P. M.	Sign Off

SUNDAY

6:30 P. M.	Philco Playhouse (PHILCO)
7:30 P. M.	Perry Como & Chesterfield Supper Club (CHESTERFIELD)
8:00 P. M.	Toast of the Town
9:00 P. M.	Fred Waring Show (GENERAL ELECTRIC)
10:00 P. M.	Sign Off

IN ADDITION—the following shows are confirmed but not yet scheduled:

AMOS 'N' ANDY
LUM 'N' ABNER
BURNS AND ALLEN
BING CROSBY

TAKE A TIP . . .

Have your dealer install your TV set at once—you won't want to miss a single one of these top TV shows!

Jefferson Standard Broadcasting Company

986 Exhibit No. G. C. 10-A

NOT GUILTY

Ten Unjustly Discharged Technicians Ruled Not Guilty of Misconduct

As Charged By

JEFFERSON STANDARD . . . (WBT)

The Employment Security Commission of North Carolina meeting in full session has ruled that the ten technicians unjustly discharged by Jefferson Standard (WBT) were

Not Guilty of Misconduct

but discharged while active in a labor dispute. The Company's claim of misconduct, if upheld by the Employment Commission, would have disqualified the discharged technicians from receiving unemployment compensation. The right of free speech as guaranteed by the Constitution of the United States has again been upheld. The Employment Commission is composed of two employer members, two labor members, two public members and an impartial chairman.

The Ten Technicians Were

Peacefully Picketing, Without Striking

the studios of Jefferson Standard (WBT) when in the middle of the night, without notice, hearing or consideration they were unjustly discharged. Publicizing of the dispute began when Jefferson Standard (WBT) refused to either agree to a just discharge clause or submit the matter to an impartial arbitrator.

When All The Facts Are Known No Other Decision Can Be Rendered But . . . NOT GUILTY

RADIO BROADCAST TECHNICIANS
LOCAL UNION NO. 1229
International Brotherhood of Electrical Workers (AFL)

987 Exhibit No. G. C. 10-B

What's Cooking?

Ques. What's cooking at Radio Station WBT?

Ans. Ten peacefully picketing engineers have been unjustly discharged.

Ques. Why were the engineers picketing the studios of WBT?

Ans. In protest to the lack of job security.

Ques. Why didn't the engineers strike?

Ans. They did not want to interrupt your favorite radio program, or retard the coming of television to Charlotte, because of their dispute with the management of WBT.

Ques. Will the Union arbitrate the dispute?

Ans. Yes. The Union has offered to arbitrate the dispute before an impartial arbitrator appointed by Governor Kerr Scott but the management of WBT has refused to arbitrate.

Ques. Why won't the management of WBT arbitrate?

Ans. We feel their refusal to arbitrate indicates they know they have unjustly discharged these engineers and will not let an impartial arbitrator decide the question.

Ques. What can I do to help?

Ans. *Contact the management of WBT and request that they reinstate the unjustly discharged engineers. Also contact the advertisers of WBT and request that they contact WBT.* Your help will be greatly appreciated by the engineers who have night and day, Sundays and holidays, worked faithfully to bring you your favorite radio programs.

RADIO BROADCAST TECHNICIANS
L. U. No. 1229, International Brotherhood of Electrical Workers, AFL

988 Exhibit No. G. C. 10-C

WBT Unjustly Discharges Ten Engineers

Without consideration, without notice, Mr. Chas. Crutchfield, Vice President of the Jefferson Standard Broadcasting Company, in the dead of night, unjustly discharged the ten engineers, who for the past two months, have been peacefully picketing the Studios of Radio Station WBT. The unjust discharge of the ten engineers has proven to the public that these men were right in advising the public of the unfairness of the management of WBT. The union has requested that Mr. Crutchfield immediately reinstate the unjustly discharged engineers and let an impartial arbitrator appointed by Governor Kerr Scott fairly decide the question. Mr. Crutchfield refuses to rehire the picketing engineers and will not let an impartial arbitrator fairly settle the dispute.

We ask your help in demanding that the Jefferson Standard Broadcasting Company re-employ the unjustly discharged engineers.

RADIO BROADCAST TECHNICIANS
Local Union No. 1229, International Brotherhood of Electrical Workers, AFL

989 Exhibit No. G. C. 10-D

Is Charlotte A Second-Class City?

You might think so from the kind of Television programs being presented by the Jefferson Standard Broadcasting Co. over WBTV. Have you seen one of their television programs lately? Did you know that all the programs presented over WBTV are on film and may be from one day to five years old. There are no local programs presented by WBTV. You cannot receive the local baseball games, football games or other local events because WBTV does not have the proper equipment to make these pickups. Cities like New York, Boston, Philadelphia, Washington receive such programs nightly. Why doesn't the Jefferson Standard Broadcasting Company purchase the needed equipment to bring you the same type of programs enjoyed by other leading American cities? Could it be that they consider Charlotte a second-class community and only entitled to the pictures now being presented to them?

WBT TECHNICIANS

990 Exhibit No. G. C. 10-E

Notice To Public!

YOU AS A LISTENER TO RADIO STATION WBT

Charlotte, North Carolina, should be acquainted with the facts concerning the labor dispute between the

JEFFERSON STANDARD BROADCASTING CO.

and Radio Broadcast Technicians Local Union No. 1229 of the International Brotherhood of Electrical Workers (AFL).

THE TECHNICIANS AT RADIO STATION WBT

Are peacefully picketing the station in an effort to acquaint the public with our dispute.

This organization has had a working agreement covering all Technicians with Radio Station WBT for the past 10 years, and up to this year our Labor Relations have been very satisfactory. However, during negotiations of a new agreement in January of this year the Company insisted that we insert a clause regarding discharges, "in that they would have the right to discharge any Technician, whether JUST or UNJUST, and we would be forced to accept their decision without recourse." This clause has been rejected by the entire membership. Although, we realize that the Company should have the right to discharge any Technician for JUST CAUSE, our contention is that if a man has been discharged unjustly the matter should be appealed to the National Labor Relations Board, an agency set up by the Labor Laws of the Nation to dispose of such matters and the decision of the NLRB will be accepted by both parties to the agreement.

THIS THE COMPANY WILL NOT AGREE TO

WBT Management Has Refused To Renew Last Year's Agreement

991 Exhibit No. G. C. 10-F

Notice To Public!

YOU AS A LISTENER TO RADIO STATION WBT

Charlotte, North Carolina, should be acquainted with the facts concerning the labor dispute between the

JEFFERSON STANDARD BROADCASTING CO.

and Radio Broadcast Technicians Local Union No. 1229 of the International Brotherhood of Electrical Workers (AFL).

THE TECHNICIANS AT RADIO STATION WBT

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THIS THE COMPANY WILL NOT AGREE TO

WBT Management Has Refused To Renew Last Year's Agreement

992 Exhibit No. G. C. 10-G

Notice To Public!

YOU AS A LISTENER TO RADIO STATION WBT

Charlotte, North Carolina, should be acquainted with the facts concerning the labor dispute between the

JEFFERSON STANDARD BROADCASTING CO.

and Radio Broadcast Technicians Local Union No. 1229 of the International Brotherhood of Electrical Workers (AFL).

THE TECHNICIANS AT RADIO STATION WBT

Are peacefully picketing the station in an effort to acquaint the public with our dispute.

This organization has had a working agreement covering all Technicians with Radio Station WBT for the past 10 years, and up to this year our Labor Relations have been very satisfactory. However, during negotiations of a new agreement in January of this year the Company insisted that we insert a clause regarding discharges, "in that they would have the right to discharge any Technician, whether JUST or UNJUST, and we would be forced to accept their decision without recourse." This clause has been rejected by the entire membership. Although, we realize that the Company should have the right to discharge any Technician for JUST CAUSE, our contention is that if a man has been discharged unjustly the matter should be appealed to the National Labor Relations Board, an agency set up by the Labor Laws of the Nation to dispose of such matters and the decision of the NLRB will be accepted by both parties to the agreement.

THIS THE COMPANY WILL NOT AGREE TO

WBT Management Has Refused To Renew Last Year's Agreement

993 Exhibit No. G. C. 10-H

Notice To Public!

WE FEEL THAT YOU AS A LISTENER OF
RADIO STATION WBT,

Charlotte, North Carolina, should be acquainted with the facts concerning the Labor Dispute between the Jefferson Standard Broadcasting Company and Radio Broadcast Technicians Local Union No. 1229 of the International Brotherhood of Electrical Workers (AFL).

THE TECHNICIANS AT RADIO STATION WBT ARE

NOT ON STRIKE

at the present time, although they are daily picketing the station. We have refrained from striking because we do not desire to interrupt the daily programs broadcast by WBT or to retard the coming of Television to Charlotte. Peaceful picketing of WBT is being carried on in an effort to acquaint the public with our dispute. It is our feeling that you should not be inconvenienced because of our dispute with the management of Radio Station WBT. Further, we are not trying to prevent any of the employes of WBT from performing their regular duties.

IN AN EFFORT TO REACH AN AGREEMENT WITH WBT

the Technicians have agreed to abandon their wage increase demands and other changes desired. In fact, we have offered to renew last year's agreement for another year. The Company has refused to do this. Management of WBT demands they have the right to discharge any technician for any reason whether just or unjust. Further, the Company refuses to permit an arbitrator to rule whether the Company was justified in such action. We consider this

UNFAIR and will not agree to such a proposition. Also, we believe you consider such treatment unfair and will support us in our protest.

OUR PURPOSE IS TO CALL YOUR ATTENTION TO THE BASIC FACTS

involved and to solicit your support in any way possible, to bring about an early settlement of the dispute.

Sincerely Yours,

RADIO BROADCAST TECHNICIANS

Local Union No. 1229, International Brotherhood of Electrical Workers, Affiliated with the American Federation of Labor.

994 Exhibit No. G. C. 10-I

Is Job Security important to you?

Job security to the average working man or woman is necessary for peace of mind and some measure of security in facing the future. Without job security your plans for the future mean nothing as your employer can destroy them without due consideration for your competency, length of service, etc. We believe that no one should be discharged unjustly.

For the past several years the technicians employed by the Jefferson Standard Broadcasting Company at Radio Station WBT in Charlotte, North Carolina, have enjoyed job security through an agreement between our employer and the International Brotherhood of Electrical Workers (AFL). Our agreement provided that if any technician were unjustly discharged the matter could be taken to arbitration. This year the Jefferson Standard Broadcasting Company demands that the company be permitted to discharge any technician for any reason, just or unjust. The technicians at WBT will not agree to such a proposition.

As you know the Jefferson Standard Broadcasting Company is a subsidiary of the Jefferson Standard Insurance Company of Greensboro, North Carolina; also the Pilot Life Insurance Company of Greensboro, North Carolina, is another subsidiary. WE BELIEVE THAT JOB SECURITY CAN BE SECURED FOR ALL EMPLOYEES OF THE ABOVE MENTIONED COMPANIES THROUGH COLLECTIVE ORGANIZATION. The IBEW does not organize insurance employees, as we

are an electrical organization, but we will be happy to put you in touch with the same AFL organization organizing the Prudential employees. All inquiries will be kept strictly confidential. Please contact.

RADIO BROADCAST TECHNICIANS
Local Union No. 1229, International Brotherhood
of Electrical Workers, AFL
P. O. Box 688, Charlotte, North Carolina

1016 Exhibit No. G. C. 39

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA UNEMPLOYMENT COMPENSATION DIVISION RALEIGH, NORTH CAROLINA

Notice of Layoff with Possible Disqualification or Ineligibility Condition

1. Leonard Van Flowers (Worker's Name) 2. 239-10-6219 (Social Security No.)

3. 9/3 1949 (Last Day Worked) 4. 9/6 1949 (Date of Report)

5. Place of employment, if different from employer's address below: .....

6. The worker whose name is entered above has been laid off under the conditions shown below (check condition)

- ☐ (a) No work available (Use only when wages in lieu of notice are paid)
- [x] (b) Discharge for misconduct (connected with his work) (Explain below in item 8 "Remarks")
- ☐ (c) Voluntarily quit (without good cause attributable to employer) (Explain below in item 8 "Remarks")
- ☐ (d) Labor dispute in this establishment (see Instructions to Employer, Item 6 on reverse side)
- ☐ (e) Disability in connection with work, including occupational disease
- ☐ (f) Other disability (sickness or injury)
- ☐ (g) Unexplained absence (explain below in Item 8, "Remarks")
- ☐ (h) Other (explain below in Item 8, "Remarks")

7. Has this worker received wages in lieu of notice? Check one ( ) No (x) Yes

Amount $ ..... 171.00 ..... eqnal to ..... two ..... week's pay, voluntarily paid by the company, from .....

..... to .....

8. Remarks: .....

.....

.....

9. I certify that to the best of my knowledge and belief the information entered above is true and correct. Employer's name, number, and address:

73-60-030

JEFFERSON STANDARD BROADCASTING CO.
RADIO STATION WBT
WILDER BUILDING
CHARLOTTE, NORTH CAROLINA

By Chas. H. Crutchfield Title Vice-President

1019

Exhibit No. 42-A

Form NLRB-501
(11-48)

Budget Bureau No. 64-R001.1.
Approval expires Nov. 30, 1949.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

Second Amended IMPORTANT—READ CAREFULLY	Do Not Write In This Space
Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.	Case No. 34-CA-170
	Date Filed: Amend: Amend: 9-13-49 3-14-50 6-26-50
INSTRUCTIONS.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.	Compliance Status Checked By: 7-20-50 /s/G.S.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

NAME OF EMPLOYER JEFFERSON STANDARD BROADCASTING COMPANY	NUMBER OF WORKERS EMPLOYED 26
ADDRESS OF ESTABLISHMENT (Street and number, city, zone, and State) WILDER BUILDING, SOUTH TRYON STREET CHARLOTTE, NORTH CAROLINA	NATURE OF EMPLOYER'S BUSINESS Commercial Broadcasting

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and .....(5)..... of the National
(List subsections)
Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since March 6, 1950, the Company, through its officers and agents, has refused to bargain collectively with the duly certified agent of its employees—Local Union 1229, International Brotherhood of Electrical Workers (AFL).

By this and other acts the Company has denied its employees the rights guaranteed them by the National Labor Relations Act as amended.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge

Local Union 1229, International Brotherhood of Electrical Workers

4. Address (Street and number, city, zone, and State)	Telephone No.
500 Queens Road, Charlotte 7, North Carolina	2-4055

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

International Brotherhood of Electrical Workers. (AFL)

1022 Exhibit No. 43-A

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

500 Queens Road, Charlotte, N. C.

Mobile, Alabama
May 10, 1950

Mr. Charles Crutchfield
Jefferson Standard Broadcasting Co.
Wilder Building, South Tryon Street
Charlotte, North Carolina

Dear Mr. Crutchfield:

This is to remind you of your promises to set a time, date and place that representatives of Jefferson Standard Broadcasting Company would meet with representatives of Local Union 1229, I.B.E.W. and resume negotiations.

Kindly give this your immediate attention. Local Union 1229 is ready and willing to meet with you at any reasonable time and place. We suggest that you meet with us on May 22, 1950 at 10:00 A. M. in your office.

Yours truly,

Henry F. Adair
International Representative

1023 Exhibit No. 43-B

WBT WBT-FM WBTV

JEFFERSON STANDARD
BROADCASTING COMPANY
Wilder Building Charlotte 2, N. C.

Charlotte 3-8833

Mr. Henry F. Adair
500 Queens Road
Charlotte
North Carolina

May 13, 1950

Dear Mr. Adair,

On Monday of this week I received from you a copy of a charge dated May 5, 1950, which, as I understand, you have filed with the National Labor Relations Board in behalf of your Union. While I was away from town yesterday my office received your letter dated May 10. The envelope in which the copy of the charge came to me was postmarked Little Rock, Arkansas, and the envelope containing your letter of May 10 is postmarked Mobile, Alabama. I assume, however, that in writing you I should address you at your home here in Charlotte.

The charge which you have filed says that since March 6, 1950, this Company has refused to bargain with Local Union 1229, International Brotherhood of Electrical Workers, AFL. This is not correct. Our Company has not, in fact, refused to bargain with your Union at any time. The circumstances with respect to our engaging in bargaining, in regard to a contract to succeed the one which expired on January 31, 1949, have been as follows.

Bargaining conferences were conducted by representatives of our Company and representatives of your Union for many days during January of 1949. On January 31 a contract had not been arrived at and at the suggestion of

Mr. Lee, your International Representative, the negotiations were suspended. Thereafter, during June, I believe, and early July bargaining as resumed but substantially the same matters remained unresolved as before and both sides recognizing that there seemed to be no prospect of arriving at a contract, the negotiations were abandoned by mutual consent.

1024 After that there was no further request for, or move toward, bargaining by either side until the early part of March, 1950, when, as I understand it, you got in touch with the Company and requested collective bargaining. At that time I was just beginning to recuperate from a serious operation and it is my understanding that Mr. Larry Walker told you that consideration could not be given to your request until I was able to return to my office and resume my duties.

I had not yet returned to my office when the hearing before the NLRB Trial Examiner, in the case brought against the Company by your Union, commenced on March 13. While that hearing was in progress you spoke to me in the corridor at the Post Office Building and told me that you would like to go into the bargaining matter with me as soon as possible. I replied that I was not able to give any consideration to the matter at that time and that I would appreciate your getting in touch with me in regard to it after I had returned to my office and gone back to work. Thereafter, substantially the same conversation was repeated between us a few days later in the corridor at the County Court House. On the same day, or the next day, upon the advice of my doctor, I left Charlotte and was away for several weeks. My information is that during my absence you did not communicate with the Company and since my return I have not heard from you in any way until this week. In accordance with my two conversations with you at the Post Office Building and at the County Court House, I expected you to get in touch with me further if and when you desired to take up the question of new bargaining negotiations.

Your letter of May 10 seems to imply that as a result of our conversations I was to take the initiative in communicating with you. This, however, is not correct. Our conversations were as I have stated above.

Furthermore, there seems to be an inconsistency between your charge and your letter, for your charge states that we have refused to bargain, while your letter undertakes to remind me of my "promises to set a time, date and place" for bargaining.

1025 And finally, since you say you are writing to "remind" me of this bargaining matter, I do not see why you would not so write me before filing a charge with the Labor Board, instead of first filing a charge and then writing to "remind" me.

However all this may be, it is clear that you desire our Company to engage in bargaining with your Union at the present time. I am now back at work, have fully resumed my duties, and we have, therefore, now proceeded to give thorough consideration to the question of entering into bargaining with your Union at this time.

In view of the fact that we bargained fully and in good faith with your Union for several months in an effort to arrive at a contract but without success and in view of the fact that since then events have occurred and information has been brought to our attention from which it seems likely that your Union does not now represent a majority of our technical employees, we respectfully request you to furnish us with such evidence or proof as you may be able to furnish that you do now represent a majority of these employees.

Very truly yours,

Jefferson Standard Broadcasting Company

By: Vice President

1164 NLRB-760
(7-48)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

In the Matter of
JEFFERSON STANDARD BROADCASTING COMPANY
Employer
and
LOCAL UNION #1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L.
Petitioner

Case No. 34-RC-106

Date issued May 2, 1949

Type of election (Check one):

☐ Consent

☐ Stipulated

[x] Board ordered

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 16
2. Void ballots 0
3. Votes cast for Local Union #1229, International Brotherhood of Electrical Workers, A. F. L. 12
4. Votes cast for ..... —
5. Votes cast for ..... —
6. Votes cast against participating labor organization(s) 2
7. Valid votes counted (sum of 3, 4, 5, and 6) 14
8. Challenged ballots 0

9. Valid votes counted plus challenged ballots (sum of 7 and 8) ____ 14

10. Challenges are (not) sufficient in number to affect the results of the election.

11. A majority of the valid votes has been cast for Local Union #1229, International Brotherhood of Electrical Workers, A. F. L.

For the Regional Director

ALBERT YANAH

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For JEFFERSON STANDARD BROADCASTING COMPANY

Benjamin W. Yendle

For ____

For LOCAL UNION #1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. L.

Walter S. Hill

For ____

1165 Form NLRB-765a RD-RM-RD

United States of America
National Labor Relations Board

JEFFERSON STANDARD BROADCASTING COMPANY Employer and LOCAL UNION #1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. of L. Petitioner	Case No. 34-RC-106

CERTIFICATION OF REPRESENTATIVES

An election having been conducted in the above matter by the undersigned Regional Director of the National Labor Relations Board pursuant to the Board's direction, and in accordance with the Rules and Regulations of the Board, and it appearing from the Tally of Ballots that a collective bargaining representative has been selected, and no objections having been filed by any of the parties within the time provided therefor.

Pursuant to the authority vested in the undersigned by the National Labor Relations Board,

IT IS HEREBY CERTIFIED that LOCAL UNION #1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. OF L.

has been designated and selected by a majority of the employees of the above-named Employer, in the unit heretofore found by the Board to be appropriate, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9(a) of the Act as amended, the said organization is the exclusive representative of all the employees in such unit for the purposes of collective bargain-

ing with respect to rates of pay, wages, hours of employment and other conditions of employment.

Signed at Winston-Salem, N. C., this 9th day of May, 1949.

On behalf of:

NATIONAL LABOR RELATIONS BOARD

John A. Penello
Regional Director for 5th Region
National Labor Relations Board.

1029

Exhibit No. R-2

August 6, 1949.

Federal Communications Commission
New Post Office Building
Washington 25, D. C.

Gentlemen:

The Citizens of Charlotte have been looking with anticipation for several months to the coming of Television in this area, however it is here, BUT IN NAME ONLY.

In talking to various dealers of Television Receivers, we find that they as well as the general public are very much disappointed in the type and quality of programs being broadcast by the local Television outlet, too, the dealers have stocked their showrooms with television receivers, but are unable to move them due to the fact that the general public is complaining about the program material now being presented.

We feel that the local outlet is not utilizing the full facilities as granted in the license, we therefore respectfully request, unless they take advantage of situation, that the television channel be granted to someone who will.

Sincerely yours,

S. L. Hicks, Business Manager
Local Union No. 1229,
International Brotherhood of
Electrical Workers.

cc/ Sou Radio Corp.
RCA Service Co.
Chapman & Wilhelm Co.
Sou Hdw Co.

Wednesday, April 16, 1952

* * * *

Before: Honorable HENRY W. EDGERTON, JAMES M. PROCTOR and DAVID L. BAZELON, Circuit Judges.

* * * *

No. 11,235

LOCAL UNION No. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

The argument in the above-entitled case was commenced by Mr. Louis Sherman, attorney for the petitioner, at 11:31; continued by Mr. A. Norman Somers, attorney for the respondent, at 12:11. The Court took a short recess at 12:38.

The argument in the above-entitled case was continued by Mr. Somers, attorney for the respondent, at 12:44; and concluded by Mr. Louis Sherman, attorney for the petitioner, at 1:03 to 1:06.

* * * *

United States Court of Appeals for the District of Columbia Circuit. Filed Nov. 20, 1952. Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11235

LOCAL UNION No. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition for Review of an Order of the National Labor Relations Board

Decided November 20, 1952

Mr. Louis Sherman for petitioner.

Mr. A. Norman Somers, Assistant General Counsel, National Labor Relations Board, for respondent.

Before EDGERTON, PROCTOR, and BAZELON, Circuit Judges.

BAZELON, *Circuit Judge:*

While bargaining over the terms of a new contract, the technicians of Station WBTV, Charlotte, North Carolina, were discharged by

their employer, the Jefferson Standard Broadcasting Company, for distributing what has come to be termed the "second-class" handbill. It reads as follows:

> "Is Charlotte a Second-Class City?
>
> "You might think so from the kind of Television programs being presented by the Jefferson Standard Broadcasting Co. over WBTV. Have you seen one of their television programs lately? Did you know that all the programs presented over WBTV are on film and may be from one day to five years old? There are no local programs presented by WBTV. You cannot receive the local baseball games, football games, or other local events because WBTV does not have the proper equipment to make these pickups. Cities like New York, Boston, Philadelphia, Washington receive such programs nightly. Why doesn't the Jefferson Standard Broadcasting Company purchase the needed equipment to bring you the same type of programs enjoyed by other leading American cities? Could it be that they consider Charlotte a second-class community and only entitled to the pictures now being presented to them?
>
> "WBTV Technicians"[1]

In a complaint filed with the Board, the Local Union, representing the technicians, contended that publication and distribution of the handbill was a concerted activity protected by § 7 of the National Labor Relations Act, as amended,[2] and that the discharges were an unfair labor practice. The Board's Trial Examiner agreed. The Board, however, one member dissenting, reversed his decision. It excluded from protection the "second-class" handbill phase of the "otherwise concededly lawful and protected" peaceful picketing sponsored by the Union. The Union now seeks modification of that part of the Board's order.

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[1] J.A., pp. 51-2.

[2] 49 Stat. 449 (1935), 29 U.S.C. § 151 (1946), as amended, Labor Management Relations Act, 61 Stat. 136 (1947), 29 U.S.C. §§ 141 *et seq.* (Supp. 1951). Section 7 of the Act provides that "Employees shall have the right * * * to engage in * * * concerted activities for the purpose of collective bargaining or other mutual aid or protection * * *." 61 Stat. 140 (1947), 29 U.S.C. § 157 (Supp. 1951). Section 8(a)(1) makes it an unfair labor practice for an employer to "interfere with, restrain or coerce employees in the exercise of their rights guaranteed in Section 7." And § 8(a)(3) makes it an unfair labor practice for an employer "By discrimination in regard to hire or tenure of employment * * * to encourage or discourage membership in any labor organization." 61 Stat. 140 (1947), 29 U.S.C. § 158(a)(1), (3) (Supp. 1951).

Despite the broad language of § 7, which assures employees the "right to * * * engage in * * * concerted activities for the purpose of collective bargaining or other mutual aid and protection," certain activities are excluded from the Act's protective ambit. For example, the Act expressly prohibits jurisdictional strikes, secondary boycotts and strikes for recognition in defiance of a certified union.[3] And the courts have denied protection to employees resorting to "unlawful" *means*, *e.g.*, a strike in contravention of the purpose of the Act,[4] in violation of a federal statute forbidding mutiny,[5] or of local laws prohibiting acts of violence or seizure of property;[6] or seeking "unlawful" *objectives*, *e.g.*, concerted action to force an employer to violate a federal statute.[7] The Board, with the approval of the House Committee of Conference handling the bill which became the Labor Management Relations Act, "has been consistently applying the principles established by the courts."[8]

Protection under § 7 of the Act, then, is withdrawn only from those concerted activities which contravene either (a) specific provisions or basic policies of the Act or of related federal statutes, or (b) specific rules of other federal or local law that is not incompatible with the Board's governing statute. The Supreme Court has indicated that "[t]he conduct thus protected is lawful conduct."[9] And Judge Learned Hand, in a case involving a union publication which severely

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[3] 61 STAT. 141 (1947), 29 U.S.C. § 158(b) 4 (A), (C), (D) (Supp. 1951).

[4] National Labor Relations Board v. Sands Mfg. Co., 306 U.S. 332, 344 (1939), concerted action in breach of a collective bargaining agreement; Scullin Steel Company, 65 N.L.R.B. 1294 (1946), strike for a wage increase during life of a contract, *enforced as modified*, 161 F. 2d 143 (8th Cir. 1947).

[5] Southern Steamship Co. v. National Labor Relations Board, 316 U.S. 31, 40, 47-8 (1942), seamen on strike away from home port.

[6] National Labor Relations Board v. Fansteel Metallurgical Corp., 306 U.S. 240, 253-8 (1939), sit-down strike violates local statutes and common law forbidding seizure of property.

[7] Hoover Co. v. National Labor Relations Board, 191 F.2d 380 (6th Cir. 1951), "* * * If the company * * * had recognized the * * * union during the pendency of the representation proceedings, it would have been guilty of an illegal act; and a boycott to compel it to commit an unlawful act would obviously be for an unlawful purpose." *Id.* at 386.

[8] H.R.REP. No. 510, 80th Cong., 1st Sess., 38-9 (1947), and the cases cited therein.

[9] National Labor Relations Board v. Fansteel Metallurgical Corp., 306 U.S. 240, 255 (1939).

the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

By: 7-20-50 /s/G.S.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

Name of Employer	Number of Workers Employed
JEFFERSON STANDARD BROADCASTING COMPANY	26
Address of Establishment (Street and number, city, zone, and State) WILDER BUILDING, SOUTH TRYON STREET CHARLOTTE, NORTH CAROLINA	**Nature of Employer's Business** Commercial Broadcasting

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and .....(5)..... of the National (List subsections)
Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. **Basis of the Charge** (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since March 6, 1950, the Company, through its officers and agents, has refused to bargain collectively with the duly certified agent of its employees—Local Union 1229, International Brotherhood of Electrical Workers (AFL).

By this and other acts the Company has denied its employees the rights guaranteed them by the National Labor Relations Act as amended.

3. **Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge**

Local Union 1229, International Brotherhood of Electrical Workers

4. Address (Street and number, city, zone, and State)	Telephone No.
500 Queens Road, Charlotte 7, North Carolina	2-4055

5. **Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit** (To be filled in when charge is filed by a labor organization)

International Brotherhood of Electrical Workers, (AFL)

6. Address of National or International, if any (Street and number, city, zone, and State)	Telephone No.
122 Fifteenth Street, N. W., Washington 5, D. C.	District 8770

7. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By .....HENRY F. ADAIR.....
(Signature of representative of person filing charge)

.....June 24, 1950.....
(Date)

.....International Representative.....
(Title, if any)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 80)

criticised the employer's business dealings, said: "[S]o long as the activity is not unlawful, we can see no justification for making it the occasion for a discharge * * *."[10] More recently the Board in the *Hoover Co.* case reiterated the correct rule when it declared that it is "not free * * * to measure concerted activity in terms of whether the conduct is wise or fair, or satisfies standards which we think desirable."[11]

The Board properly applied this rule to the extent that it found that the *objective* of the "second-class" handbill "—to extract a concession from the employer with respect to the terms of their employment—was lawful."[12] But the Board did not apply this rule to the handbill as a *means* for achieving that objective.[13] Instead of determining the legality or illegality of the use of the handbill, it only found that, unlike other handbills used in the dispute which were signed by the Union and made reference to the pending negotiations, this one was "hardly less *'indefensible'* than acts of physical sabotage"[14]—apparently primarily because its purpose was undisclosed on its face.[15] It denied protection under § 7, saying that "the gist of their appeal to the public was that the employer ought to be boycotted because he offered a shoddy product to the consuming public—not because he was 'unfair' to the employees who worked on that product."[16] By giving "indefensible" a vague content different from "unlawful,"[17] the Board misconceived the scope of the established rule.

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[10] National Labor Relations Board v. Peter Cailler Kohler Swiss Chocolates Co., 130 F.2d 503, 506 (2d Cir. 1942), affirming a Board order.

[11] The Hoover Co., 90 N.L.R.B. 1614, 1621 (1950), *reversed* on another ground, *i.e.*, that the concerted action intended to force the employer to violate the Act, Hoover Co. v. National Labor Relations Board, 191 F.2d 380 (6th Cir. 1951). We disagree with the court's suggestion by way of dictum that even if the objectives as well as the means of the boycott were lawful, the protection of the Act could have been withdrawn. *Id.* at 389 *et seq.*

[12] Board's decision, J.A., p. 16.

[13] Board's decision, J.A., p. 17, fn. 18: "We do not reach and do not decide the question, secondarily raised by Respondent, whether the handbill in question constituted actionable defamation."

[14] J.A., p. 16. Emphasis supplied.

[15] *Ibid.*

[16] J.A., p. 17.

[17] The Board, with the exception of one of its own decisions, draws only upon cases involving such unlawful means as "sit-down strikes, sabotage, violence or similar conduct." Board opinion, J.A., pp. 13, 14, and fn. 6, which cites, in addition to International Union, U.A.W.

We think the Board failed to make the finding essential to its conclusion that the concerted activity was unprotected. Sound practice in judicial review of administrative orders precludes this court from determining "unlawfulness" without a prior consideration

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v. Wisconsin Employment Relations Board, 336 U.S. 245 (1949); Harnischfeger Corp., 9 N.L.R.B. 676 (1938); and Elk Lumber Co., 91 N.L.R.B. 333 (1950), only those cases mentioned in notes 4-7, *supra*. In the U.A.W. case, the Supreme Court, merely by way of illustrating that not all concerted activities are protected by § 7 of the Act, quoted the following dictum from an early Board decision: "The question before us is, we think, whether [the] particular activity was so *indefensible*, under the circumstances, as to warrant the [employer] under the Act, in discharging the [employees] for this type of union activity." Harnischfeger Corp., 9 N.L.R.B. 676, 686 (1938) (emphasis supplied). The Board's argument in the instant case suggests that the Supreme Court thereby gave approval to withdrawing the protection of the Act where a concerted activity was lawful as to means and objective. But as we read the U.A.W. case, so far as pertinent here, the Supreme Court held that the Wisconsin statute prohibiting certain concerted activity which was neither forbidden nor legalized by the Labor Management Relations Act was not in conflict with that Act. Applied to the instant case, it would mean that a concerted activity violating valid state law will not be protected by § 7 of the Act. *Id.* at 255 *et seq.* Thus the Supreme Court gave no broader meaning to "indefensible" than "unlawful." That the Court was thinking in terms of "lawful" and "unlawful" as the underlying criteria for the application of protection under the Act is clearly demonstrated. It said:

> "* * * No longer can any state, as to relations within reach of the Act, treat otherwise lawful activities to aid unionization as an illegal conspiracy merely because they are undertaken by many persons acting in concert. But because legal conduct may not be made illegal by concert, it does not mean that otherwise illegal action is made legal by concert." *Id.* at 258.

Nor can we accept the Board's decision in the Elk Lumber case to support its view in the instant case. For in Elk, as here, the Board found a concerted activity for a "lawful" objective unprotected without finding the means "unlawful." For a discussion raising other doubts on the reasoning in the Elk case, see NOTE, 60 YALE L.J. 529 (1951).

and finding by the Board.[18] Since the initial judgment is within the province of the Board, the petition for modification and enforcement of that part of the order before the court is denied, and the case is remanded[19] to the Board for further proceedings not inconsistent with this opinion.

Reversed and remanded.

United States Court of Appeals for the District of Columbia Circuit. Filed Nov. 20, 1952. Joseph W. Stewart, Clerk.

United States Court of Appeals for the District of Columbia Circuit
October Term, 1952

No. 11,235

LOCAL UNION NO. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition for Review of and to Modify an Order of the National Labor Relations Board

Before: EDGERTON, PROCTOR, and BAZELON, Circuit Judges.

JUDGMENT AND DECREE

This case came on to be heard on the transcript of the record from the National Labor Relations Board, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the petition for modification and enforcement of that part of the order of the National Labor Relations Board on review in this Court be, and it is hereby, denied; that the order of the National Labor Relations Board on review in this case be, and it is hereby, reversed; and that this case be, and it is hereby, remanded to the

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[18] *See* Federal Power Commission v. Idaho Power Company, 21 U. S. L. WEEK 4005 (Nov. 10, 1952); Jaffe, *Judicial Review: "Substantial Evidence on the Whole Record,"* 64 HARV. L. REV. 1233, 1256 *et seq.* (1951); and DAVIS, ADMINISTRATIVE LAW 903 (1951).

[19] *See* National Labor Relations Board v. Virginia Power Co., 314 U.S. 469, 479-80 (1941); Continental Oil Co. v. National Labor Relations Board, 313 U.S. 212, 214 (1941); Phelps Dodge Co. v. National Labor Relations Board, 313 U.S. 177, 194-7, 200 (1941).

National Labor Relations Board for further proceedings not inconsistent with the opinion of this Court.

Per Circuit Judge BAZELON.

Dated: November 20, 1952.

United States Court of Appeals for the District of Columbia Circuit. Filed Feb. 2, 1953. Joseph W. Stewart, Clerk.

United States Court of Appeals for the District of Columbia Circuit

No. 11,235

LOCAL UNION No. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, APPELLANT

v.

NATIONAL LABOR RELATIONS BOARD

DESIGNATION OF RECORD

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for Writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint Appendix.
2. Minute entry of argument.
3. Opinion.
4. Judgment and Decree.
5. This designation.
6. Clerk's certificate.

WALTER J. CUMMINGS, JR.,
Solicitor General,
Counsel for Appellee.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing designation of record has been mailed to the following:

Louis Sherman, Esquire
1200 15th St., N.W.
Washington, D. C.
Counsel for Appellant

WALTER J. CUMMINGS, JR.,
Solicitor General,
Counsel for Appellee.

January 30, 1953.

United States Court of Appeals for the District of Columbia Circuit

I, JOSEPH W. STEWART, Clerk of the United States Court of Appeals for the District of Columbia Circuit, hereby certify that the foregoing pages numbered 1 to 273, both inclusive, constitute a true copy of the joint appendix to the briefs of the parties and of the record and proceedings in the said Court of Appeals, as designated by counsel for the respondent, in the case of:

LOCAL UNION NO. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 11,235 — January Term, 1953, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this thirteenth day of February, A.D. 1953.

[SEAL.]

JOSEPH W. STEWART,
Clerk of the United States Court of Appeals for the District of Columbia Circuit.

In the Supreme Court of the United States, October Term, 1952

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LOCAL UNION NO. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

STIPULATION

It is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled cause that, for the purpose of the petition for a writ of certiorari, the printed record shall consist of the following:

1. Joint Appendix.
2. Minute entry of argument.
3. Opinion.
4. Judgment.
5. Decree.

6. Designation of record.
7. Clerk's certificate.
8. This stipulation.

It is further stipulated and agreed that petitioner will cause the Clerk of the United States Court of Appeals for the District of Columbia Circuit to transmit the original transcript of record to the Supreme Court of the United States and that any of the parties may refer in their briefs to the record filed in the Supreme Court, including any part thereof which has not been printed.

WALTER J. CUMMINGS,
Solicitor General,
Counsel for Petitioner.

LOUIS SHERMAN,
Counsel for Respondent.

February 10, 1953.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1953 242916 1190

No. 609, October Term, 1952

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LOCAL UNION NO. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Order allowing certiorari

Filed May 4, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 609

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LOCAL UNION NO. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the District of Columbia Circuit entered on November 20, 1952 (R. 265-270), which set aside an order of the Board, dismissing in part a complaint against Jefferson Standard Broadcasting Company, and remanded the case to the Board for further proceedings not inconsistent with the opinion of that Court.

OPINIONS BELOW

The opinion of the court below (R. 265-270) has not yet been officially reported. The findings of

fact, conclusions of law, and order of the Board (R. 60, 177, 191-199, 985-999, 1001-1004), are reported at 94 NLRB 1507.

JURISDICTION

The judgment of the court below (R. 270) was entered on November 20, 1952. The jurisdiction of this Court is invoked under 28 U. S. C. 1254, and under Section 10 (e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether the National Labor Relations Board properly found that the distribution by employees of a pamphlet disparaging the quality of their employer's television programs with the undisclosed object of inducing the employer to come to terms in contract negotiations was not the kind of activity entitled to the protection of Sections 7 and 8 of the National Labor Relations Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, Secs. 151, *et seq.*), are set forth in the Appendix, *infra*, pp. 22-26.

STATEMENT

Upon charges filed by petitioner (hereinafter called the "Union"), the General Counsel for the Board issued a complaint alleging that the Jefferson Standard Broadcasting Company (hereinafter called "the Company") violated Sections 8 (a) (1), (3), and (5) of the National Labor Relations Act, as amended (R. 43-44). After the usual pro-

ceedings under Section 10 of the Act, the Board, on June 26, 1951, issued an order (R. 10) dismissing that part of the complaint which alleged that the Company discharged nine employees in violation of Section 8 (a) (3) and unlawfully refused to bargain with the Union in violation of Section 8 (a) (5). The pertinent facts upon which the Board's order are predicated may be summarized as follows:

I. The Facts

In December 1948, the Union was the collective bargaining representative of the technicians of the Company, an operator of a radio and television service (R. 46, 47, 73; 95, 134, 177). During that month, the Union and the Company began to negotiate for a collective bargaining contract (R. 14, 47; 94-95, 135). The negotiations continued until July 8, 1949, when the parties reached an impasse regarding the terms of a clause providing for the arbitration of discharges (R. 14, 49; 95, 115-116, 136, 217). The following day, July 9, 1949, the Union began to picket the Company's downtown place of business in Charlotte, North Carolina, without, however, calling a strike (R. 14, 50; 96-97, 100). By placards and handbills, the pickets appealed to the public, in the name of the Union, to support the employees' stand in the contract dispute (R. 14-15, 50-51; 97, 127-132, 241-251).

When these methods failed, the Union on August 24 commenced the distribution of a handbill which condemned the Company for offering inferior television service (R. 15-17, 51-52; 96-97, 241-251).

Unlike the preceding leaflets, the new leaflet made no reference to the pending labor dispute, and did not bear the name of the Union, being signed simply "WBTV Technicians" (*ibid.*). The text of the handbill, which is referred to in the record as the "second-class" handbill, is as follows (R. 15; 51-52; 97, 244):

> IS CHARLOTTE A SECOND-CLASS CITY?
>
> You might think so from the kind of Television programs being presented by the Jefferson Standard Broadcasting Co. over WBTV. Have you seen one of their television programs lately? Did you know that all the programs presented over WBTV are on film and may be from one day to five years old. There are no local programs presented by WBTV. You cannot receive the local baseball games, football games, or other local events because WBTV does not have the proper equipment to make these pickups. Cities like New York, Boston, Philadelphia, Washington receive such programs nightly. Why doesn't the Jefferson Standard Broadcasting Company purchase the needed equipment to bring you the same type of programs enjoyed by other leading American cities? Could it be that they consider Charlotte a second-class community and only entitled to the pictures now being presented to them?
>
> WBTV TECHNICIANS

The handbill was distributed widely throughout the business section of Charlotte, not only at the

picket line, but elsewhere, in places such as busses, barber shops, and restaurants (R. 15, 53; 148, 150, 151, 157, 171, 189, 194, 197). Some of them were sent to businessmen by mail (R. 149, 157, 182, 184). In all, 5,000 copies were distributed from August 24 through September 2, 1949 (R. 52-53; 101, 157-158).

The second-class handbill, like all the previous handbills, was drafted and approved by the Union's officers and executive committee (R. 15, 52; 103-104). The distribution of the handbill occasioned widespread comment in the community and caused the Company to apprehend a loss of advertising revenue due to dissatisfaction with its television broadcasts (R. 16, 53; 137-139, 149, 157, 160-161, 172, 179, 180, 181, 182, 187, 192). Television equipment distributors and dealers became "very concerned" about the effect of the handbill on their business and expressed their concern to the Company personally, by mail, and by telephone (R. 16, 53; 137-138, 172, 180, 183, 185, 187, 191, 192). There was, in fact, an unexpected drop in sales of television receiving equipment during the month following distribution of the handbill (R. 60, n. 10; 183, 186, 187, 191), and the Company operated "in the red" during that period (R. 53; 143-144).

In order to protect the business from further injury, the Company, by letters dated September 3, 1949, discharged the nine employees involved in this proceeding (R. 54; 92, 162, 224-225), all of whom the Board found, either distributed, or were responsible for the distribution of the "second-class"

leaflet (R. 18, 52, 98, 101-105, 106, 133).[1] Pointing out in these letters that the Company had not objected to, or interfered with, the distribution of any literature prior to the "second-class" handbill because of its belief that the employees were merely "trying to make the public believe that your employer is unfair to you," the Company declared (R. 54; 92, 224-225):

> Now, however, you have turned from trying to persuade the public that we are unfair *to you* and are trying to persuade the public that we give inferior service *to them*. While we are struggling to expand into and develop a new field, and incidentally losing large sums of money in the process, you are busy trying to turn customers and the public against us in every possible way, even handing out leaflets on the public streets advertising that our operations are "second-class," and endeavoring in various ways to hamper and totally destroy our business. Certainly we are not required by law or common sense to keep you in our employment and pay you a substantial salary while you thus do your best to tear down and bankrupt our business.

As already stated, *supra*, p. 3, the Company and the Union reached an impasse in the negotiations on July 8, 1949, prior to the commencement of the

[1] The Board found that a tenth employee, whom the Company also discharged, did not in fact distribute, and was not responsible for the distribution of the handbill and, accordingly, that his dismissal by the Company was not justified (R. 18-19; 102, 104).

picketing. On September 6, 1949, three days after the discharge of the employees heretofore discussed, the Union requested the Company to reinstate these employees, submit their cases to arbitration, and "upon settlement of the discharge question" to resume collective bargaining (R. 19-20, 75; 100, 231). The Company rejected the Union's proposals, indicating that it was not willing to resume negotiations on the basis proposed by the Union since the employees were discharged "for just and compelling reason and we are not willing to have them back in our employment" (R. 20, 75-76; 100, 232).

About six months later, in March 1950, and again in May 1950, the Union repeated its request to resume negotiations (R. 20, 23, 76; 202-203, 209, 210-214, 255). On May 13, 1950, the Company rejected the Union's request on the ground that because of the discharge of the employees who had distributed the "second-class" handbills, the Union no longer represented a majority of the employees in the appropriate unit (R. 23, 73; 204, 205, 207, 258).

II. The Board's Decision

Upon the foregoing facts, a majority of the Board (four of the five members) concluded that the Company had not violated Section 8 (a) (3) and (1) of the Act by discharging the nine employees involved in this proceeding for distributing the "second-class" handbill (R. 13-17). The Board found that although the employees' ultimate purpose in distributing the handbill was to wrest concessions from the Company with respect to the

terms of their employment, and was therefore lawful, the means utilized by them were not protected concerted activities within the meaning of the Act. The Board stated that the employees' ultimate purpose

> . . . was undisclosed; the employees purported to speak as experts, in the interest of consumers and the public at large. They did not indicate that they sought to secure any benefit for themselves, *as employees*, by casting discredit upon their employer.
>
> In our judgment, these tactics, in the circumstances of this case, were hardly less "indefensible" than acts of physical sabotage. The Board has held, and we reaffirm, that the Act protects employees against employer reprisal when they speak freely "on organizational matters" (to borrow the Trial Examiner's expression), and in one way or another denounce their employer for his conduct of labor relations or affairs germane to the employment relationship. Moreover, employees acting in concert may exhort consumers to refrain from purchasing their employer's product unless and until he alters his labor policy or practices. But this is a different case. Here, the subject matter of the employees' verbal attack upon the employer was not related to their interests *as employees*. And the gist of their appeal to the public was that the employer ought to be boycotted because he offered a shoddy product to the consuming public—not because he was "unfair" to the employees who worked on that product. [Footnotes omitted.]

Accordingly, the Board concluded that the activity was beyond the scope of statutory protection and the discharge of the employees who engaged in it was not a violation of Section 8 (a) (3). The Board further concluded that since the discharges were lawful, the loss of the Union's majority status, as a result of such discharges, justified the Company's subsequent refusal to bargain (R. 23).[2] The Board therefore dismissed the complaint insofar as it alleged that the Company discharged the nine employees in question and refused to bargain collectively with the Union, in violation of the Act.

III. The Court's Decision

The Union petitioned the court below to review and modify the Board's order insofar as it dismissed the allegations of the complaint as noted above. The court below, without disturbing any of the Board's findings of fact, concluded that the standard of "indefensibility" applied by the Board in determining whether the employees' activities were protected by Section 7 of the Act, was improper (R. 268-269). The court held that the correct criterion for determining whether a concerted activity came within the protection of the Act is whether it is "lawful" or "unlawful" (R. 267-

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[2] Member Murdock dissented from the majority's views, agreeing with the trial examiner that the employees' activities were protected by Section 7 of the Act (R. 28-37, 59-62). Like the court below, Mr. Murdock stated that concerted activity such as here involved loses its protection only if it is "unlawful" (R. 32). In view of their conclusion that the distribution of the handbill was not protected because it did not relate to the employer-employee relationship, the majority did not reach the question whether the activity was "unlawful" (R. 17).

270). The court stated that "Protection under Sec. 7 . . . . is withdrawn only from those concerted activities which contravene either (a) specific provisions or basic policies of the Act or of related federal statutes, or (b) specific rules of other federal or local law that is not incompatible with the Board's governing statute" (R. 267). Accordingly, the court set aside the Board's order insofar as it dismissed the complaint and remanded the case to the Board "for further proceedings not inconsistent with [the court's] opinion" (R. 270).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that all concerted activities undertaken in the course of a labor dispute are entitled to the protection of the Act, so long as such activities do not violate any federal or state statute, even though the subject matter of such activities is not related to the labor dispute or the employer-employee relationship.

2. In failing to affirm the order of the Board insofar as it dismissed the complaint against the employer.

REASONS FOR GRANTING THE WRIT

1. Section 7 of the Act guarantees to employees the right to engage in "concerted activities for the purpose of collective bargaining or other mutual aid or protection." While agreeing with the Board that not all concerted activities are protected by the Act, the court below held that all such activities are entitled to protection unless the object thereof, or the means employed to achieve such object, are affirmatively made unlawful by federal or local law.

The holding thus casts a mantle of protection on all collective action not in itself unlawful to achieve an objective in a labor dispute, even though the subject matter of such action is not related to the employees' interests as employees and is foreign to the employer-employee relationship. The issue is recurring and is one of fundamental importance in the operation of the statute. In the present state of the law, neither employer nor employees can move with assurance when any unorthodox type of activity is involved in a labor dispute. The employees risk discharge; the employer may be found guilty of an unfair labor practice with liability for back pay. Because of the manifest importance of the question and because, as we show below, the holding below is in conflict with decisions of this Court and courts of appeals, the issue should be authoritatively resolved.

2. The test for determining whether a concerted activity comes within the protection of the Act was enunciated by the Board more than thirteen years ago in *Harnischfeger Corp.*, 9 NLRB 676. The Board there stated (at p. 686):

> Section 7 of the Act expressly guarantees employees the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. We do not interpret this to mean that it is unlawful for an employer to discharge an employee for *any* activity sanctioned by a union or otherwise in the nature of collective activity. The question before us is, we think, whether this particular activity was so indefensible, under the circumstances, as to warrant the respond-

ent [employer], under the Act, in discharging the [employees] for this type of union activity.

In determining whether concerted activity is "so indefensible, under the circumstances," as to warrant its withdrawal from the protection of the Act, the Board has taken into account not only the nature of the particular activity but also its impact on the legitimate interests of the employer. See, *e.g., Carnegie-Illinois Steel Corp.*, 84 NLRB 851, 852-853, enforced, *sub nom. Albrecht* v. *National Labor Relations Board*, 181 F. 2d 652 (C.A. 7) (involving failure to protect plant from serious injury). While the legality or illegality of the concerted activity has been found to be significant, and oftentimes controlling (see *e.g., American News Co.*, 55 NLRB 1302) (strike for wage increase not authorized by War Labor Board), it has by no means been determinative in all situations. In some cases, the collective action, while in itself lawful, was found to be wholly unrelated to legitimate employee interests. See, *e.g., Fontaine Converting Works*, 77 NLRB 1386, 1387-1388 (strike over demotion of a foreman). In others, the benefits which might reasonably accrue to the employees from the particular activity were found too trivial in comparison to the detriment which would flow to the employer from such activity. *Carnegie-Illinois Steel Corp.*, 84 NLRB 851, 852-853, enforced *sub nom. Albrecht* v. *National Labor Relations Board*, 181 F. 2d 652 (C.A. 7); *Elk Lumber Co.*, 91 NLRB 333, 336-338 (involving a slowdown). Accordingly, in such cases, the Board, in

conformity with "the purpose and policy" of the Act "to prescribe the legitimate rights of both employees and employers" in their "relations with each other" (Sec. 1(b) of the Act), has held that the concerted activity, although not unlawful in itself, was not entitled to the protection of the Act. These decisions accord with the principle laid down by this Court in *Republic Aviation Corporation* v. *National Labor Relations Board*, 324 U. S. 793, 798, and later reaffirmed in *National Labor Relations Board* v. *Stowe Spinning Company*, 336 U. S. 226, 231, that "Like so many others, these rights [to engage in concerted activities] are not unlimited in the sense that they can be exercised without regard to any duty which the existence of rights in others may place upon employer or employee. Opportunity to organize and proper discipline are both essential elements in a balanced society." See also *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 253.

3. Recently, in *United Automobile Workers* v. *Wisconsin Board*, 336 U. S. 245, this Court expressly approved the test laid down by the Board in the *Harnischfeger* case (9 N.L.R.B. 676) regarding the nature of the concerted activities protected by the Act. In the *United Automobile Workers* case, a union and its members were enjoined under a state statute from engaging in a series of short, unannounced, and intermittent work stoppages, the object of which was to force the employer to grant bargaining concessions. This Court, in rejecting the union's contention that such stoppages were "federally protected concerted ac-

tivities" and therefore beyond the power of the state to regulate, concluded that the conduct in question "was neither forbidden by federal statute nor was it legalized and approved thereby" (336 U. S. at pp. 255, 264-265). In reaching its conclusion, the Court quoted the criterion for determining whether a concerted activity is protected or unprotected as set forth in the *Harnischfeger* case (*supra*, pp. 11-12), and later reiterated in *Armour & Co.*, 25 NLRB 989, and then declared (336 U. S. at pp. 256-257):

> In view of that statement, the facts of the present case do not bring it within the protection of the Act as administered by the Board. * * * we do not find any fixed Board policy to apply the Act to such facts as we have here. The quoted statement from the Board's two opinions indicates lack of belief that it was creating any such rule.
>
> However, in no event could the Board adopt such a binding practice as to the scope of § 7 in the light of the construction, with which we agree, given to § 7 by the Courts of Appeals, authorized to review Board orders. In similar cases they have denied *comparable work stoppages* the protection of that section. *C. G. Conn. Ltd.* v. *Labor Board*, 108 F. 2d 390; *Labor Board* v. *Condenser Corp.*, 128 F. 2d 67; *Home Beneficial Life Ins. Co.* v. *Labor Board* 159 F. 2d 280; and see *Labor Board* v. *Draper Corp.*, 145 F. 2d 199; *Labor Board* v. *Indiana Desk Co.*, 149 F. 2d 987. To hold that the alleged fixed Board interpretation has irrevocably labeled all concerted activities "pro-

tected" would be in the teeth of the Board's own language and would deny any effect to the Courts of Appeals' decisions. The latter decisions and our own, *Labor Board* v. *Fansteel Corp.*, 306 U. S. 240; *Southern S. S. Co.* v. *Labor Board*, 316 U. S. 31; *Labor Board* v. *Sands Mfg. Co.*, 306 U. S. 332; *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740; and see *Hotel & Restaurant Employees' Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 437, clearly interdict any rule by the Board that every type of concerted activity is beyond the reach of the states' adjudicatory machinery. [Italics added.]

The assertion of the court below that this Court in the *United Automobile Workers* case was merely "thinking in terms of 'lawful' and 'unlawful' as the underlying criterion for the application of protection under the Act" and, therefore, that this Court "gave no broader meaning to 'indefensible' than unlawful" (R. 268-269, n. 17) is inaccurate. This Court found that the concerted work stoppages in the *United Automobile Workers* case were "indefensible" not because they violated any state or federal statute, or other law, but because "in view" of the criterion set forth in the *Harnischfeger* case, "the facts of the * * * case [did] not bring it within the protection of the Act as administered by the Board" (336 U. S. at p. 256). It was only because the conduct was not protected or forbidden by the National Labor Relations Act that this Court held that the State of Wisconsin was free to regulate it and illegalize it.

Moreover, in reaching its conclusion that the activities in the *United Automobile Workers* case were outside of the protection of the Act, this Court relied on such cases as *C. G. Conn, Ltd.* v. *National Labor Relations Board,* 108 F. 2d 390 (C.A. 7); *National Labor Relations Board* v. *Condenser Corp.,* 128 F. 2d 67 (C.A. 3); *Home Beneficial Life Ins. Co.* v. *National Labor Relations Board,* 159 F. 2d 280 (C.A. 4) "with which," the Court pointedly stated (336 U. S. at p. 257), "we agree." None of these cases involved concerted activities illegalized by federal or state statutes.[3] Yet the court in each case found the concerted activity, even though related to conditions and terms of employment, to be outside the protection of the Act. Thus those cases are inconsistent with the holding of the court below. Moreover, the very fact that this Court cited these cases in *pari passu* with such cases as *National Labor Relations Board* v. *Fansteel Metallurgical Corp.,* 306 U. S. 240, and *Southern S. S. Co.* v. *National Labor Relations Board,* 316 U. S. 31, both of which did involve illegal conduct, indicates that the Court was not merely thinking in terms of a distinction between "unlawful" and otherwise improper conduct.

That this Court did not intend to draw such a

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[3] In the *Conn* case, the employees concertedly refused to work overtime until their demands were met by management. In the *Condenser* case, they stopped work in the middle of the day to press grievances although the employer promised to discuss these grievances at the end of the day. In the *Home Beneficial* case, the employees, insurance agents, concertedly refused to abide by the employer's rule to report to the company's office each morning before starting work.

distinction in the *United Automobile Workers* case is, we think, conclusively demonstrated by the Court's reliance on the legislative history of Section 7 of the Act which clearly established Congressional approval of the Board's construction that the section excludes from the protection of the Act not only "unlawful" concerted activities but also "other improper conduct" (336 U. S. at pp. 255-264). As explained by the Court (336 U. S. at pp. 260-263), the House which considered the 1947 amendments to the Wagner Act, originally passed a provision expressly withdrawing statutory protection from certain enumerated concerted activities.[4] The House Conference committee succeeded in persuading the House to eliminate this provision and to accept the text of Section 7 as proposed by the Senate on the grounds (1) that "the courts have firmly established the rule that under the existing provisions of section 7 * * * employees are not given any right to engage in unlawful or *other improper conduct*"; (2) that "in its most recent decisions the Board has been consistently applying the principles established by the courts"; and (3) that "there was real concern that the inclusion of such a provision might have a limiting effect and make *improper* conduct not specifically mentioned subject to the protection of the act."[5] In the face of this evidence of Congressional accept-

[4] H.R. 3020, Sec. 12, in Legislative History of the Labor Management Relations Act, 1947, pp. 204-207

[5] H. Rep. No. 510, 80th Cong., 1st Sess., p. 33, in Legislative History of the Labor Management Relations Act, 1947, pp. 542-544. (Italics supplied.)

ance and adoption of the "unlawful and other improper conduct" test,[6] evidence which the Court itself stressed, it is clear that contrary to the assertion of the court below, this Court in the *United Automobile Workers* case did not equate the term "indefensibility" with "unlawfulness."

4. The decision below is in conflict not only with this Court's *United Automobile Workers* decision and cases cited therein (*supra*, pp. 13-15), but also with *Maryland Drydock Co.* v. *National Labor Relations Board*, 183 F. 2d 538 (C.A. 4) (circulation of literature "insulting to those in charge of management and destructive of discipline"); *Albrecht* v. *National Labor Relations Board*, 181 F. 2d 652 (C.A. 7) (involving a concerted refusal of supervisors, employees under the controlling Wagner Act, to perform the work of strikers to protect the plant); *Joanna Cotton Mills Co.* v. *National Labor Relations Board*, 176 F. 2d 749 (C.A. 4) (circulation of petition calling for removal of supervisory employee); *National Labor Relations Board* v. *Reynolds International Pen Co.*, 162 F. 2d 680 (C.A. 7) (concerted walkout to protest promotion of foreman); and *National Labor Relations Board* v. *Montgomery Ward & Co.*, 157 F. 2d 486 (C.A. 8) (refusal to process goods ordered by struck plant). In none of these cases was the legality or illegality of the concerted activity by itself determinative of its

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[6] Cf. *National Labor Relations Board* v. *Gullett Gin Co.*, 340 U.S. 361, 366; *Brewster* v. *Gage*, 280 U.S. 327, 337.

protected or non-protected character under the Act. The decision in each case turned on the fact that the employees' concerted activities, considered in the light of all the circumstances, including the nature of their acts and the impact of the conduct on the employers' legitimate interests, were unjustifiable. Each case involved an appropriate adjustment of the "conflicts and interests between employer and employee." The *Albrecht* case, 181 F. 2d at p. 659.[7]

5. The facts found by the Board, and left undisturbed by the court below, establish that the employees in the instant case deliberately undertook to alienate their employer's customers by disparaging the quality of its product. The handbills through which the employees' campaign of disparagement was conducted concealed from the public the true objective of their conduct, namely to force the employer to capitulate to the Union's bargaining demands, which the employer steadfastly but in good faith refused during the negotiations. The handbills made no reference whatever to any employment grievances or demands, not

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[7] The court below pointed to language in *National Labor Relations Board* v. *Peter Cailler Kohler Swiss Chocolates Company*, 130 F. 2d 503, 506 (C. A. 2d), and *The Hoover Company*, 90 N. L. R. B. 1614, 1621 (R. 267-268). However, on their facts, these cases do not support the decision. In the *Peter Cailler* case, the basic question was whether concerted action to support an agricultural cooperative was protected under the Act. In *The Hoover Company* case, a union boycott of the company's products was undertaken to aid in resolving a labor dispute. In both cases, the action was openly and avowedly union action, undertaken as such. In the present case, one of the important elements was the failure to disclose that the criticism of the employer's programs was union activity.

even to the pendency of a labor dispute. And the employees signed their pamphlets in the name of the "technicians," thus ostensibly holding themselves out as experts on the employer's business and advising the public at large as to the technical quality of its product. In sum, although the ultimate purpose of the employees was to extract a concession from the employer with respect to the terms of their employment, the gist of their appeal to the public was that the employer should be boycotted because he offered an inferior product to the public. The attack upon the employer was not related to the employees' interests as employees.

In these circumstances the Board, weighing the legitimate interests of the employer and the employees could, we submit, conclude, as it did, that the distribution of the handbills had such deleterious impact upon the employer's legitimate interest to be free from such an attack upon his product as to make the technique utilized by the employees to achieve their ends not permissible. "In such cases it is the function of the Board to weigh the conflicts which arise from time to time out of the exercise of [the employees' statutory] rights and to determine in each case whether the interest of the employees or the interest of the employers should be held paramount." *National Labor Relations Board* v. *Illinois Tool Works*, 153 F. 2d 811, 816 (C. A. 7). Cf. *e.g.*, *Albrecht* v. *National Labor Relations Board*, 181 F. 2d 652 (C. A. 7); *C. G. Conn, Ltd.* v. *National Labor Relations Board*, 108 F. 2d 390 (C. A. 7); *National Labor Relations*

Board v. *Condenser Corp.*, 128 F. 2d 67 (C. A. 3); *Home Beneficial Life Insurance Co.* v. *National Labor Relations Board*, 159 F. 2d 280 (C. A. 4), all cited with express approval in the *U. A. W.* case, *supra*, 336 U. S., at pp. 256-257.

CONCLUSION

The issues presented are of substantial importance in the administration of the Act, and the decision below conflicts in principle and result with the decisions of this Court and courts of appeals. It is respectfully submitted that this petition for a writ of certiorari should be granted.

WALTER J. CUMMINGS, JR.,
Solicitor General.

GEORGE J. BOTT,
General Counsel,
National Labor Relations Board.

FEBRUARY, 1953.

APPENDIX

The relevant provision of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. V, 141, *et seq.*), is set forth as follows:

Short Title and Declaration of Policy

Section 1. * * *

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

* * *

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, 151, *et seq.*), are as follows:

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

Sec. 8. (a) It shall be an unfair labor practice for an employer——

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise * * *.

* * * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act * * *.

* * * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * within any circuit * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony

upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review * * * by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the

unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

* * * * *

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In the Supreme Court of the United States

October Term, 1953

No. 15

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

LOCAL UNION NO. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 265-270) is reported at 202 F. 2d 186. The findings of fact, conclusions of law, and order of the Board (R. 10-87) are reported at 94 NLRB 1507.

JURISDICTION

The judgment of the court below (R. 270) was entered on November 20, 1952. The petition for a

writ of certiorari, filed on February 17, 1953, was granted on May 4, 1953 (R. 275). The jurisdiction of this Court is invoked under 28 U.S.C. 1254, and under Section 10 (e) and (f) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether the National Labor Relations Board properly found that the distribution by employees of a handbill disparaging the quality of their employer's television programs with the object of inducing the employer to come to terms in contract negotiations was not the kind of activity entitled to the protection of Sections 7 and 8 of the National Labor Relations Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V. Secs. 151, *et seq.*), are set forth in the Appendix, *infra*, pp. 43-48.

STATEMENT

Upon charges filed by respondent (hereinafter called the "Union"), the General Counsel for the Board issued a complaint alleging that the Jefferson Standard Broadcasting Company (hereinafter called "the Company") had violated Sections 8 (a) (1), (3), and (5) of the National Labor Relations Act, as amended (R. 43-44). After the usual proceedings under Section 10 of the Act, the Board, on June 26, 1951, issued an order (R. 10) dismiss-

ing that part of the complaint which alleged that the Company had discharged nine employees in violation of Sections 8 (a) (1) and (3) and had unlawfully refused to bargain with the Union in violation of Section 8(a)(5). The pertinent facts upon which the Board's order is predicated may be summarized as follows:

I. The Facts

In December 1948, the Union was the collective bargaining representative of the technicians of the Company, an operator of a radio and television station (R. 46, 47, 73; 95, 134, 177). During that month, the Union and the Company began to negotiate for a collective bargaining contract (R. 14, 47; 94-95, 135). The negotiations continued until July 8, 1949, when the parties reached an impasse regarding the terms of a clause providing for the arbitration of disputes over the discharge of employees (R. 14, 49; 95, 115-116, 136, 217). The following day, July 9, 1949, the Union began to picket the Company's downtown place of business in Charlotte, North Carolina, without, however, calling a strike (R. 14, 50; 96-97, 106). By placards and handbills, the pickets appealed to the public, in the name of the Union, to support the employees' stand in the contract dispute (R. 14-15, 50-51; 97, 127-132, 245-251). These placards and handbills, in substance, called attention to the "labor dispute" between the Company and the Union, stated

that the Company was "unfair" to the employees, complained that the Company had refused to accept an arbitration clause regarding discharges, and appealed for public support in the employees' "fight for fairness at WBTV" (*ibid.*).

On August 24 the Union commenced the distribution of a different type handbill in order to "apply more pressure [on the Company] than [had] been used to date" (R. 15-17, 51-52; 96-97, 125-127, 188-190, 244). Shortly before this, on July 14, 1949, the Company had inaugurated, at a cost of approximately half a million dollars, operation of a television station (R. 51; 143-144, 193). The new handbill attacked the quality of the television programs broadcast by the Company and the equipment used by it. Unlike the preceding leaflets, the new one made no reference to the pending labor dispute, and did not bear the name of the Union, being signed simply "WBTV Technicians". The text of the handbill, which is referred to in the record as the "second-class" handbill, is as follows (R. 15, 51-52; 97, 244):

Is Charlotte a Second-Class City?

You might think so from the kind of Television programs being presented by the Jefferson Standard Broadcasting Co. over WBTV. Have you seen one of their television programs lately? Did you know that all the programs presented over WBTV are on film and may be

from one day to five years old. There are no local programs presented by WBTV. You cannot receive the local baseball games, football games, or other local events because WBTV does not have the proper equipment to make these pickups. Cities like New York, Boston, Philadelphia, Washington receive such programs nightly. Why doesn't the Jefferson Standard Broadcasting Company purchase the needed equipment to bring you the same type of programs enjoyed by other leading American cities? Could it be that they consider Charlotte a second-class community and only entitled to the pictures now being presented to them?

WBTV Technicians

The handbills were distributed widely throughout the business section of Charlotte, not only at the picket line, but elsewhere, in places such as busses, barber shops, and restaurants (R. 15, 53; 148, 150, 151, 157, 171, 189, 194, 197). Some were sent to businessmen by mail (R. 149, 157, 182, 184). In all, 5,000 copies were distributed from August 24 through September 2, 1949 (R. 52-53; 101, 157-158).

The second-class handbill, like all the previous handbills, was drafted and approved by the Union's officers and executive committee (R. 15, 52; 103-104). The distribution of the handbill oc-

casioned widespread comment in the community and caused the Company to apprehend a loss of advertising revenue due to dissatisfaction with its television broadcasts (R. 16, 53; 137-139, 149, 160-161, 172, 179, 180, 181, 182, 187, 192). Television equipment distributors and dealers became "very concerned" about the effect of the handbill on their business and communicated their concern to the Company personally, by mail, and by telephone (R. 16, 53; 137-138, 172, 180, 183, 185, 187, 191, 192).[1]

On September 3, 1949, the Company discharged the nine employees involved in this proceeding (R. 54; 92, 162, 224-225), all of whom, the Board found, either distributed, or were responsible for the distribution of the "second-class" leaflet (R. 18, 52; 98, 101-105, 106, 133). Pointing out in the letters of dismissal that the Company had not objected to, or interfered with, the distribution of any literature prior to the "second-class" handbill because of its belief that the employees were merely "trying to make the public believe that your employer is unfair to you," the Company declared (R. 54; 92, 224-225):

> Now, however, you have turned from trying to persuade the public that we are unfair *to*

---

[1] There was, in fact, an unexpected drop in sales of television receiving equipment during the month following distribution of the handbill (R. 60, n. 10; 183, 186, 187, 191), and the Company operated "in the red" during that period (R. 53; 143-144).

you and are trying to persuade the public that we give inferior service *to them.* While we are struggling to expand into and develop a new field, and incidentally losing large sums of money in the process, you are busy trying to turn customers and the public against us in every possible way, even handing out leaflets on the public streets advertising that our operations are "second-class," and endeavoring in various ways to hamper and totally destroy our business. Certainly we are not required by law or common sense to keep you in our employment and pay you a substantial salary while you thus do your best to tear down and bankrupt our business.

As already noted, *supra,* p. 3, the Company and the Union had reached an impasse in the negotiations on July 8, 1949, prior to the commencement of the picketing. On September 6, 1949, three days after the discharge of the employees who had participated in the distribution of the "second-class" handbill, the Union requested the Company to reinstate these employees, submit their cases to arbitration, and "upon settlement of the discharge question" to resume collective bargaining (R. 19-20, 75; 100, 231). The Company rejected the Union's proposals, indicating that it was not willing to resume negotiations on the basis proposed by the Union since the employees were discharged "for just and compelling reason and we

are not willing to have them back in our employment" (R. 20, 75-76; 100, 232).

About six months later, in March 1950, and again in May 1950, the Union repeated its request to resume negotiations (R. 20, 23, 76; 202-203, 209, 210-214, 255). On May 13, 1950, the Company rejected the Union's request on the ground that because of the discharge of the employees who had distributed the "second-class" handbills, the Union no longer represented a majority of the employees in the appropriate unit (R. 23, 77-78; 204, 205, 207, 258).

Thereafter, upon charges filed by the Union, the General Counsel of the Board issued a complaint alleging, *inter alia*, that the Company had violated Section 8 (a) (1) and (3) of the Act by discharging the employees for distributing the "second-class" handbills. (R. 43-44.) The complaint was subsequently amended to include the further allegation that the Company had violated Section 8 (a) (5) of the Act by refusing to bargain collectively with the Union (R. 45).

II. The Board's Conclusions and Order

Upon the foregoing facts, a majority of the Board (four of the five members), overruling the trial examiner, concluded that the Company had not violated Section 8 (a) (1) and (3) of the Act by discharging the nine employees involved in this proceeding for distributing the "second-class" handbill (R. 13-17). The Board found that al-

though the employees' ultimate purpose in distributing the handbill was to wrest concessions from the Company with respect to the terms of their employment, and was therefore lawful, the means utilized by them to achieve this objective were not protected concerted activities within the meaning of the Act. The Board stated (R. 16-17) that the employees' ultimate purpose

> . . . was undisclosed; the employees purported to speak as experts, in the interest of consumers and the public at large. They did not indicate that they sought to secure any benefit for themselves, *as employees*, by casting discredit upon their employer.
>
> In our judgment, these tactics, in the circumstances of this case, were hardly less "indefensible" than acts of physical sabotage. The Board has held, and we reaffirm, that the Act protects employees against employer reprisal when they speak freely "on organizational matters" (to borrow the Trial Examiner's expression), and in one way or another denounce their employer for his conduct of labor relations or affairs germane to the employment relationship. Moreover, employees acting in concert may exhort consumers to refrain from purchasing their employer's product unless and until he alters his labor policy or practices. But this is a different case. Here, the subject matter of the employees' ver-

> bal attack upon the employer was not related to their interests *as employees*. And the gist of their appeal to the public was that the employer ought to be boycotted because he offerred a shoddy product to the consuming public—not because he was "unfair" to the employees who worked on that product. [Footnotes omitted.]

Accordingly, the Board concluded that the activity was beyond the scope of statutory protection and the discharge of the employees who engaged in it was not a violation of the Act. The Board further concluded, contrary to the trial examiner's recommendation, that since the discharges were lawful, the loss of the Union's majority status as a result of such discharges justified the Company's subsequent refusal to bargain (R. 23).[2] The Board therefore dismissed the complaint insofar as it alleged that the Company had violated the Act in dis-

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[2] Member Murdock dissented from the majority's views, agreeing with the trial examiner that the employees' activities were protected by Section 7 of the Act (R. 28-37, 59-62). Like the court below, Mr. Murdock stated that a concerted activity like the one involved here loses its protection only if it is "unlawful" (R. 32). In view of their conclusion that the distribution of the "second-class" handbill was not a form of concerted activity within the meaning and protection of the Act because it did not relate to the employer-employee relationship, the majority did not reach the question whether the handbill constituted actionable defamation and for that reason was outside the statutory protection (R. 17).

charging the nine employees in question and refusing to bargain collectively with the Union.[8]

III. The Court's Decision

The Union petitioned the court below to review and modify the Board's order insofar as it dismissed the allegations of the complaint involving distribution of the second-class handbill (R. 1-7). The court, without disturbing any of the Board's subsidiary findings of fact, concluded that the Board had erred in dismissing these portions of the complaint (R. 265-270). The court held that the Board was powerless to deny the protection of the Act to concerted activities for mutual aid as long as the objectives of the activities and the means utilized to attain those objectives were both "lawful." The court stated (R. 267-268):

> Protection under § 7 of the Act, then, is withdrawn only from those concerted activities which contravene either (a) specific pro-

[8] The Board found that a tenth employee, whom the Company also discharged, upon the mistaken belief that he had participated in the distribution of the "second-class" handbill, did not in fact distribute, and was not responsible for the distribution of, the handbill and, accordingly, that his dismissal by the Company was violative of Section 8 (a) (3) and (1) of the Act (R. 18-19; 102, 104). The Board further found that the Company violated Section 8 (a) (1) by interfering with, restraining and coercing another employee in the exercise of rights guaranteed by the Act (R. 11-13). These findings and that portion of the Board's order relating to them are not involved in the present proceeding.

visions or basic policies of the Act or of related federal statutes, or (b) specific rules of other federal or local law that is not incompatible with the Board's governing statute.

Accordingly, the court concluded that the Board had failed to make "the finding essential to its conclusion" that the distribution of the second-class bill did not fall within the statutory protection; it set aside the Board's order insofar as it dismissed the complaint; and remanded the case to the Board for further proceedings to determine the "lawfulness" or "unlawfulness" of the distribution of the handbills consistent with the court's opinion (R. 269-270).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that all concerted activities undertaken in the course of a labor dispute are entitled to the protection of the Act, so long as such activities do not violate any federal or local law, even though the subject matter of such activities is not related to the labor dispute or the employer-employee relationship.

2. In failing to affirm the order of the Board insofar as it dismissed the complaint against the employer.

SUMMARY OF ARGUMENT

A.

Section 7 of the Act, in general terms, guarantees to employees the right to engage in "concerted activities for the purpose of collective bargaining or other mutual aid or protection." Congress deliberately refrained from defining the kinds of concerted activities which fall within the protective ambit of the section. Instead, it vested in the Board the function of determining in each case whether the particular activity is, in the light of competing employer and employee interests, the type of concerted activity which is entitled to statutory protection. In the exercise of this function the Board may properly find that a collective activity, even though undertaken for a proper objective and not in itself unlawful, is on balance, "so indefensible" as to warrant denial of the protection of the Act to employees who participate in it.

In reaching its conclusion that the protection of the Act extends to all concerted activities unless the objective sought or the means pursued are "unlawful," the court below misread the decision of this Court in *United Automobile Workers* v. *Wisconsin Employment Relations Board*, 336 U.S. 245, and overlooked the relevant legislative history of the Act.

In the *United Automobile Workers* case this Court upheld, as against the claim of federal supersedure, the authority of a state to enjoin the

type of concerted activity involved there. Rejecting claims that the Act confers an absolute right to engage in every kind of concerted activity or that the Board had "irrevocably labeled all concerted activities 'protected,'" the Court concluded that otherwise lawful concerted activities may be so unjustified in particular circumstances as to warrant denial of the protection of the Act. The legislative history confirms this view. In amending the Act in 1947 Congress purposefully refrained from enacting specific limitations upon the scope of the phrase "concerted activities for the purpose of * * * mutual aid or protection" contained in Section 7. Instead, it authorized the Board to give content to the phrase and in the exercise of this function to continue to apply the normal tests of justification for concerted activities which the Board and the courts had developed under the original Act. Under the original Act both the Board and the courts had held that concerted activities, however otherwise lawful, might in the circumstances be so unjustified as to forfeit the normal protection which the Act extends to concerted activities. Congress approved and adopted this reading of the Act.

B.

The decision below stands or falls with the premise, in our view erroneous, that only "unlawful" concerted activities are unprotected by the Act. Once it is recognized that the Board may in at

least some circumstances withhold protection from concerted activities which are not unlawful, it becomes clear that the Board's decision in this case must be sustained.

Implementing the purpose of the Labor Relations Act to protect the concerted activities of employees in matters affecting labor relations, the Board has extended the protection to employees who publicize the facts of a labor dispute, disparage their employer for his labor policies, or appeal to the public to boycott the employer's product until he alters his labor practices But the tactic involved here differs decisively from such protected activities. The "second-class" handbill, although prompted by the labor dispute between the employees and the Company, made no reference to any employment grievances or demands, or even to the pendency of the labor dispute. It denounced the employer, not because of his conduct of labor relations or his position in the labor controversy, but because he was allegedly offering to the public an inferior television service. By purporting to speak as experts, advising the consuming public as to the technical quality of the employer's product, the employees entered a field wholly unrelated to the dispute and transmuted the original controversy between the Company and the employees over employment conditions into a dispute between the employer on the one hand and the employees and the consumer public on the other over the qual-

ity of the employer's product. In this setting, the justification for affording the protection of the Act to employees who denounce their employer, *i.e.*, publicizing a labor dispute in order to persuade the public to give its support in the dispute, is lacking.

Here, in a word, the Board was correct in concluding that the employer's discharge of the offending employees was no more than a wholly reasonable and expectable reaction to faithless service. While the employer's legitimate interest in preserving his business is commonly subordinated to his employees' right under the Act to take concerted action against him in a labor dispute, nothing in the Act requires retention on the payroll of employees who spend their off-duty hours in destructive tactics "hardly less 'indefensible' than acts of physical sabotage" (Board decision, R. 16).

This modest and obviously sensible limitation on the scope of protected concerted activities constitutes no impediment to the pursuit of the activities and objectives with which Congress was concerned in the Act. The Board's decision in no way "impairs, dilutes, qualifies or * * * subtracts from any of the rights guaranteed and protected by the federal Act" *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U.S. 740, 750. On the contrary, the decision merely recognizes the balance Congress intended to strike when it wrote the amendments of 1947.

ARGUMENT

The Board Properly Found that the Distribution of the "Second-Class" Handbill by the Company's Employees Disparaging the Quality of Their Employer's Television Service Was Not the Kind of Concerted Activity Entitled to the Protection of Sections 7 and 8 of the Act

The basic question in this case is whether all actions by employees which may literally be described as "concerted activities for * * * mutual aid or protection" are entitled to the protection of Sections 7 and 8 of the Act, provided only that they are not "unlawful" actions. The decision below, holding that only "unlawful" activities are unprotected, eliminates any need for the exercise by the Board of informed judgment in weighing the competing interests of employer and employee. It remands to the Board only a narrow and relatively simple inquiry into the legality of the Union activity in question.

Whatever superficial virtue there may be in the simplicity of the Board's role under the decision below, the Act, as construed by this Court and illuminated by its legislative history, permits no such result. It is clear, we believe, that concerted activities may be unprotected though not unlawful. And it is equally clear, when the erroneous test of unlawfulness is discarded, that the Board properly declined in the circumstances of this case to condemn as unfair labor practices the discharges of the employees who had fashioned and distrib-

uted the handbills disparaging their employer's product.

A. Concerted Activities, Though Not "Unlawful," May Nevertheless Exceed the Limits of the Coercive Tactics to Which Congress Afforded the Protection of the Act.

As in the original Act, Section 7 of the amended Act declares in relevant part that "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." Similarly re-enacted, Section 8(a) (1) makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 * * *." The Act nowhere particularizes the nature and character of the activities encompassed by the phrase in Section 7 on which the present controversy turns—"other concerted activities for * * * mutual aid or protection." Deliberately refraining from greater specificity, Congress assigned to the Board the function of defining the scope of this phrase. In vesting the Board with this discretion, Congress took cognizance of the principle that a "statute expressive of such large public policy as that on which the National Labor Relations Board is based must be broadly phrased and necessarily carries with it the task of administrative application." *Phelps Dodge Corp.*

v. *National Labor Relations Board,* 313 U.S. 177, 194. Just as Congress could not "in the nature of things * * * catalogue all the devices and stratagems for circumventing the policies of the Act" or define "the whole gamut of remedies to effectuate these policies in an infinite variety of specific situations" (*ibid.*), so it could not and did not undertake to define in detail the scope of "concerted activities for * * * mutual aid or protection." In short, "Congress advisedly left the concept flexible to be defined with particularity by the myriad of cases" coming before the Board. *Federal Trade Commission* v. *Motion Picture Advertising Service Co., Inc.,* 344 U.S. 392, 394; *Phelps Dodge, supra,* at 194; *Republic Aviation Corp.* v. *National Labor Relations Board,* 324 U.S. 793, 798; *National Labor Relations Board* v. *Hearst Publications, Inc.,* 322 U.S. 111, 130.

In the exercise of the discretion vested in it, the Board held that the means of self-help utilized by the employees in the instant case, the "second-class" handbill, although employed for a legitimate objective, was, whether lawful or not, so indefensible in the circumstances as to fall beyond the protection which the Act extends to concerted activities. Reversing the Board, the court below concluded that all activities which may be described as "concerted" and "for mutual aid or protection" are within the statute unless the means pursued or the objectives sought

are "unlawful." We submit that this conclusion, misreading the decision of this Court in *United Automobile Workers* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, is at war with the Congressional purpose and intent.

1. In the *U. A. W.* case, this Court was faced with the question whether the means of self-help utilized by employees to achieve proper objectives fell outside the protection of Section 7. There, the employees and the union had been enjoined under a state statute from engaging in a series of short, unannounced work stoppages to force the employer to grant economic concessions. Before this Court, the union asserted that the work stoppages were "federally protected concerted activities" and that hence it was beyond the power of the state to regulate them (336 U. S. at 255). The Court rejected this contention. After pointing out that the Board had held that Section 7 does not sanction all concerted activities for mutual aid or protection, and that a particular activity may be "so indefensible" in the circumstances as to forfeit the protection of Section 7, the Court declared (pp. 256-257):

> In view of that statement [of the Board], the facts of the present case do not bring it within the protection of the Act as administered by the Board. * * * we do not find any fixed Board policy to apply the Act to such facts as we have here. The quoted statement

from the Board's two opinions indicates lack of belief that it was creating any such rule.

However, in no event could the Board adopt such a binding practice as to the scope of § 7 in the light of the construction, with which we agree, given to § 7 by the Courts of Appeals, authorized to review Board orders. In similar cases they have denied comparable work stoppages the protection of that section. *C. G. Conn, Ltd.* v. *Labor Board,* 108 F. 2d 390; *Labor Board* v. *Condenser Corp.,* 128 F. 2d 67; *Home Beneficial Life Ins. Co.* v. *Labor Board,* 159 F. 2d 280; and see *Labor Board* v. *Draper Corp.,* 145 F. 2d 199; *Labor Board* v. *Indiana Desk Co.,* 149 F. 2d 987. To hold that the alleged fixed Board interpretation has irrevocably labeled all concerted activities "protected" would be in the teeth of the Board's own language and would deny any effect to the Courts of Appeals' decisions. The latter decisions and our own, *Labor Board* v. *Fansteel Corp.,* 306 U. S. 240; *Southern S. S. Co.* v. *Labor Board,* 316 U.S. 31; *Labor Board* v. *Sands Mfg. Co.,* 306 U. S. 332; *Allen-Bradley Local* v. *Wisconsin Employment Relations Board,* 315 U. S. 740; and see *Hotel & Restaurant Employees' Local* v. *Wisconsin Employment Relations Board,* 315 U. S. 437, clearly interdict any rule by the Board that

every type of concerted activity is beyond the reach of the states' adjudicatory machinery.

The Court concluded that the recurrent work stoppages were in the circumstances not entitled to the protection Section 7 normally extends to concerted activities. That ruling necessarily establishes that the Board may exclude certain forms of concerted activity from the protection of Section 7 without a finding that such activities are unlawful. And this point, we think, marks the fundamental error in the decision below. The Court below read the *U. A. W.* opinion to mean (R. 268, n. 17) that since the state statute prohibited the activities in question, this Court "gave no broader meaning to 'indefensible' than 'unlawful'" and that "the Court was thinking in terms of 'lawful' and 'unlawful' as the underlying criteria for the application of protection under the Act." But this reading overlooks the "substantial issue" formulated and resolved in this Court's opinion—namely, "whether Congress [had] protected the union conduct which the State [had] forbidden, and hence the state legislation must yield." 336 U. S. at 252. If the conduct in question had been protected by Section 7 of the Federal Act, it could not have been enjoined by the state as "unlawful." "It is elementary that what Congress constitutionally has given, the state may not constitutionally take away." *Id.* at 254. And see *Automobile Workers v. O'Brien*, 339 U. S. 454, 459.

In a word, the conduct involved in the *U. A. W.* case could be held unlawful by the State only because it was not within the protection of Section 7 of the National Labor Relations Act. It fell outside Section 7, not on the bootstraps premise that it was unlawful, but because the Section, which does not confer an "absolute right to engage in every kind of strike or other concerted activity" (336 U. S. at 260), could not properly be read to comprehend such "coercive tactics" (*id.* at 264). The Court's reliance on, and expressed agreement with, *C. G. Conn. Ltd.* v. *National Labor Relations Board*, 108 F. 2d 390 (C. A. 7); *National Labor Relations Board* v. *Condenser Corp.*, 128 F. 2d 67 (C. A. 3); and *Home Beneficial Life Ins. Co.* v. *National Labor Relations Board*, 159 F. 2d 280 (C. A. 4), certiorari denied, 332 U. S. 758, confirms this reading of the decision. See 336 U. S. at 257. None of these cases involved "unlawful" concerted activities.[4] The court of appeals in each case, nevertheless, found that the means of self-help pursued by the employ-

[4] In the *Conn* case, the employees concertedly refused to work overtime until their demands were met by management. In the *Condenser* case, they stopped work in the middle of the day to press grievances although the employer promised to discuss these grievances at the end of the day. In the *Home Beneficial* case, the employees, insurance agents, concertedly refused to abide by the employer's rule to report to the company's office each morning before starting work after he had refused their demand for a relaxation of the rule.

ees in support of their economic demands were in the circumstances unjustified and unduly oppressive, and hence unprotected by the Act. The very fact that the Court cited these cases in conjunction with such cases as *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, and *Southern S. S. Co.* v. *National Labor Relations Board*, 316 U. S. 31, both of which did involve illegal conduct, dispels the notion that the Court was thinking in terms of a simple, mechanical distinction between "lawful" (protected) and "unlawful" (unprotected) conduct.[5]

2. The legislative history of the amended Act bolsters the view that Congress empowered the Board to deny protection not only to unlawful but also to otherwise improper concerted activities. As this Court noted in the *U. A. W.* case, 336 U. S. at 260-262, the House, in considering the 1947 amendments to the Wagner Act, originally adopted a provision expressly withdrawing statutory protection from certain enumerated activities.[6] This provision was "inserted," according to the House Conference Report, "by reason of early decisions of the Board to the effect that the language of section 7 protected concerted activities regardless of their nature or objectives." The House Conference Com-

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[5] See Note, 66 Harv. L. Rev. 1321-1322 (1953); and see, generally, Cox, *The Right to Engage in Concerted Activities*, 26 Ind. L. J. 319, 337 (1951).

[6] H. R. 3020, Sec. 12, in *Legislative History of the Labor Management Relations Act*, 1947, pp. 204-207.

mittee, however, persuaded the House to abandon this provision and to accept the present text of Section 7, as proposed by the Senate. The Committee supported its recommendation by pointing out that the provision in the House bill specifically outlawing certan types of concerted activities was unnecessary because "the courts have firmly established the rule that under the existing provisions of section 7 of the National Labor Relations Act, employees are not given any right to engage in unlawful *or other improper conduct,*" and that the Board in "its most recent decisions * * * has been consistently applying the principles established by the courts." The Committee further pointed out that "there was real concern that the inclusion of such a provision might have a limiting effect and make *improper conduct* not specifically mentioned subject to the protection of the act.'" (Italics supplied).

Congress accordingly readopted the broad language of Section 7. By deliberately omitting to enact specific limitations on Section 7, Congress, as is apparent from the legislative history cited above, authorized the Board to continue to determine whether particular types of concerted activities were entitled to the protection of the Act by applying the normal tests of justification which

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[7] H. Rep. No. 510, 80th Cong., 1st Sess., pp. 38-39, in *Legislative History*, pp. 542-544.

the Board and the courts had developed under the Wagner Act.

Under the Wagner Act both the Board and the courts had held that concerted activities inconsistent with the express provisions or basic policy of the Act or of some related federal statute were not within the statutory protection See, *e.g.*, *Southern Steamship Co.* v. *National Labor Relations Board*, 316 U. S. 31; *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332; *American News Co.*, 55 NLRB 1302. But, in addition, the Board and the courts of appeals had also held that the protection of the statute might be denied to conduct which, although not independently unlawful, was in the circumstances so improper, either because of the objective sought or the way in which the objective was pursued, as to be indefensible. Early in its history the Board, as this Court noted in the *U. A. W.* case, declared in *Harnischfeger Corp.*, 9 NLRB 676, at p. 686, and reiterated in *Armour & Co.*, 25 NLRB 989, at p. 996:

> Section 7 of the Act expressly guarantees employees the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. We do not interpret this to mean that it is unlawful for an employer to discharge an employee for *any* activity sanctioned by a union or otherwise in the nature of collective activity. The question before us is, we think, whether this particular

> activity was so indefensible, under the circumstances, as to warrant [the employer], under the Act, in discharging the [employees] for this type of union activity.

Applying this test, the Board denied the statutory protection to an employee who joined in a strike without having first afforded the employer an opportunity to obtain a replacement to perform his duties, which were essential to the physical safety of the plant;[8] to employees who participated in a slowdown in a plant working on a high priority war contract;[9] and to employees whose organizational activities on plant premises tended to incite insubordination or flouting of discipline, or to cause interference with production.[10]

Similarly, the courts of appeals under the Wagner Act had held that particular work stoppages or other concerted activities which were undertaken in connection with labor disputes and were not in themselves unlawful were nevertheless on balance so indefensible in the circumstances as to fall outside the statutory protection. Thus, for example, in *C. G. Conn, Ltd.* v. *National Labor Relations Board*, 108 F. 2d 390, 396-398 (C. A. 7), it

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[8] *Republic Creosoting Co.*, 19 NLRB 267, 290.

[9] *Underwood Machinery Co.*, 74 NLRB 641, 646-647.

[10] *Wilson & Co., Inc.*, 43 NLRB 804, 820; *Thompson Products, Inc.*, 57 NLRB 925, 970, n. 44; *Goodyear Aircraft Corp.*, 57 NLRB 502, 508.

was held that the concerted refusal of employees to work overtime because of a dispute concerning overtime pay was such a flagrant invasion of the employer's right to regulate working time, in the absence of agreement on this subject with the employees, as to fall outside the scope of protected concerted activities. In *Home Beneficial Life Ins. Co.* v. *National Labor Relations Board*, 159 F. 2d 280, 285-286 (C. A. 4), certiorari denied, 332 U. S. 758, the court held unprotected the employees' concerted refusal to report to their employer's office each morning before undertaking to service their customers, after the employer had refused their demand that the reporting requirement be dropped. In *National Labor Relations Board* v. *Montgomery Ward & Co.* 157 F. 2d 486, 496 (C. A. 8), it was held that employees who concertedly refused, while at work, to process the orders of a struck plant were not engaged in concerted activities protected by the Act. In *National Labor Relations Board* v. *Condenser Corporation*, 128 F. 2d 67, 77 (C. A. 3), employees engaged in a work stoppage during the middle of the working day and refused to continue working until their demands for higher pay were met, although the employer had agreed to take up the matter at the end of the day. The court, holding that the employer was justified in discharging the participants in the work stoppage, declared, "We do not think that under the circumstances the statute prevents

their discharge.'"[11] In none of these cases could it be said that the employees had engaged in "unlawful" concerted activity. The decision in each case turned on the consideration that the employees' concerted activities, viewed in the light of all the circumstances, including the nature of their acts and their impact on the employer's legitimate interest in preserving or maintaining his business operations, were unjustifiable and therefore unprotected.

Congress, aware of the current of decisions by the courts and the Board, left intact the rule that concerted activities might be "indefensible" and therefore unprotected, though not "unlawful," when it amended the Act. As we have noted, Congress purposefully refrained from defining the scope of the term "concerted activities" because of its concern that any specific definition might fail adequately to exclude, in addition to "unlawful" conduct, "other improper conduct" which should not be entitled to the protection of the Act. Congress was satisfied that the Board and the courts were excluding from the protection of the Act both "unlawful" and "other improper conduct". As this Court has pointed out, "the record indicates that, had the courts not made these interpretations, the Congress would have gone as far

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[11] As noted above, this Court in the *U. A. W.* case (336 U.S. at 257) cited with express approval the *Conn*, *Home Beneficial*, and *Condenser* cases.

or farther in the direction of limiting the right to engage in concerted activities." *United Automobile Workers* v. *Wisconsin Employment Relations Board*, 336 U. S. at 260. In short, the holding of the court below that Congress withheld the protection of the Act only from such concerted activities as were "unlawful" is refuted by the legislative history of the Act.

3. The Board and the courts, since the 1947 amendments to the Act, have continued to apply the limitations on protected concerted activities developed under the Wagner Act and approved by Congress. Thus, in *Elk Lumber Co.*, 91 NLRB 333, the Board, finding that a concerted slowdown to induce the employer to grant economic demands was unprotected, stated (pp. 336-337):

> Section 7 of the Act guarantees to employees the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. However, both the Board and the courts have recognized that not every form of activity that falls within the letter of this provision is protected. The test, as laid down by the Board in the *Harnischfeger Corporation* case [9 NLRB 676], and referred to with apparent approval by the Supreme Court in the recent *Wisconsin* case [*U. A. W.* v. *W. E. R. B.*, 336 U. S. 245], is whether the particular activity involved is so indefensible as to warrant the employer in discharging the

> participating employees. Either an unlawful objective or the adoption of improper means of achieving it may deprive employees engaged in concerted activities of the protoection of the Act. [Footnotes omitted.]

In *Carnegie-Illinois Steel Corporation,* 84 NLRB 851, supervisory employees[12] concertedly refused, during a strike of rank and file employees, to report to work to perform certain assignments essential to prevent serious damage to plant equipment. The Board held that the supervisors' failure to report for work was, in the circumstances, such a serious breach of their duty to their employer as to remove them from the protection of the Act, even though it could not be said that their conduct was "unlawful." It stated (at pp. 853-854):

> * * * [T]he reinstatement rights of employees discharged for concerted activities cannot be considered in a vacuum, but must be determined in the context of their legal duties and responsibilities.
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> * * * * * * * *
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> So, in the instant case, in view of the peculiar susceptibility of the Respondent's plant to crippling damage from an abrupt shut-down

[12] The alleged unfair labor practice in that case occurred under the Wagner Act, which covered supervisory employees; the Board decision, however, was handed down after the amended Act was passed.

> of its operations, the Respondent was entitled to have in supervisory positions persons on whom it could depend for emergency duty to forestall destruction of key plant facilities, and it was not unlawful for it to discharge those of its supervisors who, by walking out or failing to report during the rank-and-file strike, demonstrated their lack of dependability in an emergency.

Upholding the Board's decision, the Court of Appeals for the Seventh Circuit stated (*Albrecht* v. *National Labor Relations Board,* 181 F. 2d 652, 659):

> Bearing in mind the function of the Board initially to settle conflicts in the administration of the relationship between employer and employee, we find nothing in the finding and conclusions which violates the act or goes beyond the limitations of the authority granted by Congress to the Board.

Accord: *United States Steel Co.* v. *National Labor Relations Board,* 196 F. 2d 459 (C. A. 7) (concerted refusal of plant protection employees to report for work "in time of great emergency"); *Maryland Drydock Co.* v. *National Labor Relations Board,* 183 F. 2d 538 (C. A. 4) (circulation of union literature on employer's premises "insulting to those in charge of management and destructive of discipline").

The thread that runs through the decisions, both before and after the 1947 amendments to the Act, is that rights guaranteed by the Act, like so many others, "are not unlimited in the sense that they can be exercised without regard to any duty which the existence of rights in others may place upon employer or employee. Opportunity to organize and proper discipline are both essential elements in a balanced society." *Republic Aviation Corporation* v. *National Labor Relations Board*, 324 U. S. 793, 798. To achieve the "balance of forces" which Congress thought it "necessary to create" (*National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, 128) Congress entrusted to the Board "the function * * * to weigh the conflicts which arise from time to time out of the exercise of those rights and to determine in each case whether the interest of the employees or the interest of the employers should be held paramount" (*National Labor Relations Board* v. *Illinois Tool Works*, 153 F. 2d 811, 816 (C. A. 7)). The Act, as Congress has declared, seeks to bring about an accommodation between "the legitimate rights" of employers and employees "in their relation with each other" (Section 1 (b) Labor-Management Relations Act, 1947, *infra*, p 43). In working out adjustments between these competing interests, it is the task of the Board "to determine what in fact would be the prejudice to the interests of the employer * * *, and what would be the benefit to the

employees, and whether the benefit prevailed over the prejudice, or the prejudice prevailed over the benefit" (*National Labor Relations Board* v. *Lake Superior Lumber Corp.*, 167 F. 2d 147, 152 (C. A. 6)). Weighing these competing rights and interests the Board, implementing the purpose of Congress as construed by this and other courts, may properly conclude in particular circumstances that concerted activities, though not "unlawful," are outside the purview of Sections 7 and 8.

B. The Board's Finding That the Distribution of the "Second-Class" Handbill Was Unprotected Represents a Reasonable And Valid Adjustment of the Competing Interests of the Employer and Employees

The decision below, resting on the proposition that the Board may withhold protection from concerted activities only when they are unlawful, must be rejected if, as we think has been demonstrated, this proposition is fallacious. It becomes clear that the problem in each case "is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially," and that "the Board's determination * * * is to be accepted if it has 'warrant in the record' and a reasonable basis in law." *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, 131. We submit that, under any standard of review, the Board's finding that the distribution of the "second-class" handbill was unprotected represents a reasonable and

valid "adjustment between the undisputed right of self-organization assured to employees * * * and the equally undisputed right of employers" to protect their business. *Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U. S. 793, 797-798.

The protection which the Act extends to concerted activities embraces, of course, the exercise by employees of full freedom of speech on all matters affecting organization and collective bargaining. See *Thomas* v. *Collins*, 323 U. S. 516, 533-534. Included within this guarantee is the traditional practice of employees involved in a labor dispute of publicizing the issues arising out of the employer-employee relation in an effort to persuade the public of the correctness of their position and thereby enlist its support. Giving effect to this right, the Board and the courts have marked out a wide area of protected concerted activities, including the right of employees to denounce their employer for his conduct of labor relations or other matters bearing upon the employment relationship. The Board has also held privileged the traditional type of concerted activity in which employees, seeking to enlist public support for their demands, exhort the public to boycott their employer until he alters his labor policies or practices.[13] In such

[13] *E. g., National Labor Relations Board* v. *Illinois Tool Works*, 153 F. 2d 811, 815-816 (C. A. 7); *Cusano* v. *National Labor Relations Board*, 190 F. 2d 898, 902-903 (C. A. 3), en-

cases, where the employees' attack upon the employer is related to the employment relationship and the employees' interests as employees, the Board has, as the statute requires, subordinated the employer's legitimate interest in protecting his business against disparagement. The balance thus struck reflects the fact that the Act is a labor relations statute, concerned with the adjustment through collective bargaining of disputes arising out of differences as to wages, hours, or working conditions, and that within this area employees are entitled to protection in publicizing matters of legitimate concern to them.[14]

The facts here, as the Board pointed out (R. 17), make this "a different case." The "second-class" handbill, although prompted by the labor dispute

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forcing 92 NLRB 1272, 1274-1275; *Electronics Equipment Co.*, 94 NLRB 62, 64-66, remanded and subsequently reversed on other grounds, 194 F. 2d 650, 205 F. 2d 296 (C. A. 2); *Westinghouse Electric Corp.*, 77 NLRB 1058, 1060-1061, reversed on other grounds, 179 F. 2d 507 (C. A. 6).

[14] *Cf.* the Norris-La Guardia Act, which has been said to comprehend "the conventional tactics of organized labor" (Frankfurter and Greene, *The Labor Injunction*, p. 220). Section 4 (e) of that statute gives protection to "Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence." The "second-class" handbill would scarcely qualify as a method of "giving publicity to the existence of, or the facts involved in, any labor dispute." Section 7 of the National Labor Relations Act was also designed to comprehend the conventional tactics of organized labor. *Cf. Order of Railroad Telegraphers* v. *Railway Express Agency*, 321 U. S. 342, 346.

between the employees and the Company, made no reference to any employment grievances or demands, nor even to the pendency of a labor dispute. It was distributed far from the situs of the labor dispute. Batches of handbills were distributed to the public in buses, restaurants and barber shops, and others were sent in the mail. The handbill did not purport to enlist public support for the employees in a dispute with their employer over terms and conditions of employment. It denounced the Company, not for the conduct of labor relations or its position in a labor controversy, but because it was offering to the public an inferior service. It bore simply the signature "WBT Technicians." In it the employees spoke not as employees voicing grievances relating to their interests as employees, but as experts advising the consumer public as to the technical quality of the Company's product. And, as the Board pointed out (R. 17), "the gist of their appeal to the public was that the employer ought to be boycotted because he offered a shoddy product to the consuming public—not because he was 'unfair' to the employees who worked on that product." Hence, the handbill, although prompted by the labor dispute, did not constitute a means for "the dissemination of information concerning the facts of a labor dispute * * *." *Thornhill* v. *Alabama*, 310 U. S. 88, 102. It entered a field wholly unrelated to the dispute and transmuted the controversy between the Company and the employees

over the employment relationship into a dispute between the employer on the one hand and the employees and consumer public on the other over the technical quality of the Company's television service. In a word, the normal justification for affording the protection of the Act to employees who disparage their employer, *i.e.*, publicizing a labor dispute in order to persuade the public to enlist its support in the dispute, was lacking. *Cf. Restatement of Torts*, § 799.[15] In circumstances like these,

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[15] The Union, in support of its position that the handbill was a protected form of concerted activity, relied on the opinion of Judge Learned Hand in *National Labor Relations Board v. Peter Cailler Kohler Swiss Chocolates Co.*, 130 F. 2d 503 (C. A. 2). There, the company sought to defend a charge that it had discriminatorily discharged an employee in violation of the Act on the ground that he had participated in the publication of a union resolution which protested the company's support of one of two rival milk suppliers. The Board found that the reason advanced by the employer was a pretext to cover up the real reason for the dismissal, namely, the employee's role in promoting the unionization of fellow employees. The court, without deciding whether this finding was supported by the record, concluded that the "excuse" relied on by the employer was itself invalid because the publication was a form of concerted activity for mutual aid and protection within the meaning of the Act. That case, we think, is distinguishable from the instant case. Unlike the "second-class" handbill, the resolution was signed in the name of the employees' labor organization and, as published, was in the form of a resolution passed at a meeting of the union. And, unlike the handbill, the resolution did not suggest that the public boycott the employer because he was offering the public an inferior product. Thus, the resolution was not dissimilar from the conventional appeal of a union for public support in a dispute with the employer.

an employer would seem plainly to have the right to discharge employees who seek to prevent him from selling his product, when they are paid to do just the opposite.

Moreover, the "second-class" handbill, unlike the traditional appeal for public support in a labor dispute, was not calculated simply to enlist public support for the duration of the dispute between the Company and the employees. In attacking the technical quality of the Company's television service, the handbill would normally tend to have an effect which settlement of the dispute would not dissipate. This factor is underscored by the letter of dismissal which the Company sent to the employees. The Company stated in part (*supra*, pp. 6-7):

> * * * [W]hen we were unable to agree upon the terms of a contract with your Union, you began to denounce us publicly as unfair.
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> * * * * * * * *
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> Now, however, you have turned from trying to persuade the public that we are unfair to *you* and are trying to persuade the public that we give inferior service *to them*. While we are struggling to expand into and develop a new field * * * you are busy * * * endeavoring in various ways to hamper and totally destroy our business.

Of course, the measure of protection accorded to concerted activities does not turn simply upon the degree of injury the employer may suffer or the effectiveness of the activities. But this Court's decision in the *U. A. W.* case makes it clear that disproportionate damage to the employer—particularly where the employees involved stay on the payroll while they inflict the damage—may justify discharges as a valid refusal to pay for faithless service rather than an unlawful interference with protected concerted activities. Such a result was peculiarly appropriate here, where the employer continued to employ the employees involved while they picketed its place of business in their off-duty hours, and discharged them only when they resorted to tactics properly described by the Board (R. 16) as being "hardly less 'indefensible' than acts of physical sabotage."[16]

It should be noted, finally, that the limitation placed by the Board in this case upon the scope of

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[16] *Cf. National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 345, where the Court recognized the employer's right to replace economic strikers even though it tends to minimize the effectiveness of strike action. The decision likewise represents an adjustment between the employees' interest in concerted activity and the employer's interest in continuing operations. Similar considerations have prompted the Board to qualify the employees' right to strike and hold that an employer may, without committing an unfair labor practice, for compelling economic reasons shut down his plant in anticipation of an impending strike. *Duluth Bottling Association*, 48 NLRB 1335; *Betts Cadillac Olds, Inc.*, 96 NLRB 268.

protected concerted activities does not deprive employees of means "shown to be * * * essential or intimately related to a realization of the guarantees of the federal Act * * *." *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740, 750. The employees are still free to strike, to picket, and to utilize other appropriate means for disseminating the facts of a labor dispute and enlisting public support. The Board's ruling, in short, neither "impairs, dilutes, qualifies [nor] in any respect subtracts from any of the rights guaranteed and protected by the federal Act." *Ibid.*

CONCLUSION

For the reasons stated, it is respectfully submitted that the decision of the court below should be reversed and the case remanded with directions to affirm the order of the Board and deny the petition to review.

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Acting Solicitor General.

MARVIN E. FRANKEL,
Special Assistant to the Attorney General.

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National Labor Relations Board.

September, 1953

APPENDIX

Section 1 of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. V. 141, *et seq.*), provides in pertinent part as follows:

Short Title and Declaration of Policy

Section 1. * * *

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of

labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

* * *

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, 151, *et seq*), are as follows:

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

UNFAIR LABOR PRACTICES

Sec. 8 (a) It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise. * * *

* * * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of

employees with or without back pay, as will effectuate the policies of this Act * * *

* * * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * within any circuit * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused

because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review * * * by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was en-

tered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

* * * * *

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No. ~~609~~ 15

IN THE

Supreme Court of the United States

OCTOBER TERM, ~~1952~~ 1953

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LOCAL UNION NO. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, RESPONDENT

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit and Petition for Leave to Intervene

---

BRIEF IN OPPOSITION

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IN THE

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OCTOBER TERM, 1952

No. 609

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LOCAL UNION NO. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, RESPONDENT

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit and Petition for Leave to Intervene

---

BRIEF IN OPPOSITION

Local Union No. 1229, International Brotherhood of Electrical Workers prays that the petition of the National Labor Relations Board for a writ of certiorari to review the decision of the United States Court of Appeals for the District of Columbia Circuit entered on November 20, 1952 (R. 265-270) be denied and that the petition of Jefferson Standard Broadcasting Company for leave to intervene be denied.

JURISDICTION

The reference in the Petition (page 2) to Section 10 (e) of the National Labor-Management Relations Act, as amended, does not appear to be correct. This case

arose out of a petition for review filed in the Circuit Court of Appeals under Section 10 (f) of the Act (R. 2) by an aggrieved party which originally filed a charge that Jefferson Standard Broadcasting Company (hereinafter referred to as the Company) had committed unfair labor practices in violation of the Act.

QUESTIONS PRESENTED

(1) Whether the Petition presents a case of extraordinary circumstances warranting departure from the usual rule that the Supreme Court will not grant certiorari to review a non-final judgment of the Circuit Court of Appeals.

(2) Whether the publication of a true handbill by employees engaged in a labor dispute, commenting fairly but adversely on the quality of the employer's television operations and having an object found lawful by the Board, is a protected concerted activity under Section 7 of the Act.

STATEMENT

I. The Facts

Respondent sets forth below a few items which it believes are required to be stated to give a more exact description of the facts and decisions in this case. This limitation is not intended to admit all other facts stated by Petitioner or to admit the Petitioner's characterization of the conduct engaged in by the employees in this case.

(1) The impasse in bargaining negotiations developed because the employer insisted upon a revision in the arbitration clause which would give it the right to discharge employees for any cause whatsoever, just or unjust, and which would limit the arbitrator's authority solely to the question of whether the acts or omis-

sions assigned by the Company for the discharge did in fact occur. The Union insisted upon the retention of the existing clause providing that the Company should have the right to discharge for just cause and if the union believed a discharge to be unjust such question would be appropriate for decision by the arbitrator. (R. 48-49).

(2) The placards and handbills used by the Union prior to the publication and distribution of the handbill in question carried not only the name of the Union but also the words "radio broadcast technicians" or "radio technicians." (R. 49-50).

II. The Board's Decision

The Board stated in its decision that "For these reasons, without attempting to formulate a test which will decide every imaginable case involving similar questions as to the scope of Section 7, we hold that the employees in this case *went beyond the pale* when they published the 'second-class handbill.'" (R. 17). (Italics supplied). It was upon the basis of this holding and the previous characterization of the employees' conduct as "indefensible" (R. 16) that the Board dismissed the complaint insofar as it alleged violations of Section 8 (a), (1) and (3) of the Act.

III. The Court's Decision

The court below, in its unanimous decision, stated that "By giving 'indefensible' a vague content different from 'unlawful' the Board misconceived the scope of the established rule. We think the Board *failed to make the finding essential to its conclusion* that the concerted activity was not protected. Sound practice in judicial review of administrative orders precludes this court from determining 'unlawfulness' without a

prior consideration and finding by the Board. Since the initial judgment is within the province of the Board, the petition for modification and enforcement of that part of the order before the court is denied and the case is remanded to the Board for further proceedings not inconsistent with this opinion." (R. 268-270). (Italics supplied).

REASONS FOR NOT GRANTING THE WRIT

The primary question raised by this case is whether this Court should determine that it is appropriate to grant the writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit to review a non-final judgment.

It is recognized that there is legal power in this Court to review non-final judgments of Federal Courts, as distinguished from the want of jurisdiction to review a judgment of the highest court in a state if such judgment is not final. (*Montgomery Building and Construction Trades Council v. Ledbetter Erection Company, Inc.*, 344 U. S. 178.) It is clear, however, that non-final judgments of Federal Courts are considered appropriate for review only where extraordinary circumstances are shown warranting the conclusion that such review is fundamental to the further conduct of the case. It must, of course, also be shown that the general rules of this Court applicable to the determination of a petition for a writ of certiorari in the case of a final judgment are satisfied.

The fact is that the instant Petition does not in any way take account of the point that the judgment below was non-final, being a judgment to reverse for failure of the administrative agency to make an essential finding and to remand for further proceedings by the agency not inconsistent with the court's opinion. It is re-

spectfully submitted that when this case is considered from either the standpoint of the rules of this Court applicable to non-final or final judgments the writ should not be granted.

This case does not present a jurisdictional issue such as was before this Court in *Larson v. Domestic and Foreign Commerce Corporation*, 337 U. S. 682-685, fn. 3 or *Land v. Dollar*, 330 U. S. 731, 734, fn. 2. Nor does it present a constitutional question such as was before this Court in *U.S.A. v. General Motors Corporation*, 323 U. S. 373, 377. See *American Construction Company v. Jacksonville Railway*, 148 U. S. 372, 384. In *National Labor Relations Board v. Mexia Textile Mills*, 339 U. S. 563, the very question before this Court was whether the Circuit Court had power to remand to the Board for the purpose of taking evidence on the matter of compliance with the Board order even though the order was before the Circuit Court on petition for enforcement.

The question of statutory interpretation sought to be presented by the Petition is whether the ruling of the court below that "protection under Section 7 . . . is withdrawn only from those concerted activities which contravene either, a) specific provisions or policies of the Act or of related federal statutes or, b) specific rules of other federal or local law that is not incompatible with the Board's governing statute" (R. 267) is in accord with the decisions of this Court or whether the Board's standards of "indefensibility" and "beyond the pale" are to be the legal measure of the protection of concerted activities under Section 7.

It must be noted that from a procedural point of view the judgment of the Circuit Court of Appeals is not an enforceable order. It is rather a reversal of the Board's order dismissing the complaint insofar as

it alleges that the Jefferson Standard Broadcasting Company violated Section 8 (a) (1) and (3) of the Act by discharging those individuals who published and distributed the leaflet entitled, "Is Charlotte a Second-Class City?", which is set forth on page 4 of the Petition. The judgment of the court below also remanded the case to the Board for further proceedings not inconsistent with the opinion. The remand does not direct the Board to enter an order finding violations of Section 8 (a) (1) and (3) nor does it direct or require the taking of additional evidence. It appears to require only that the Board make a determination on the issues presented by the allegations of the complaint relating to Section 8 (a) (1) and (3) of the Act under the standard of interpretation of Section 7 which has been announced by the court below.

It should be further noted that the Petition does not present the precise issue of whether an act found by the Board to be lawful, though indefensible, is protected since the Board did not find whether the conduct, as distinguished from its object, was lawful or unlawful. As stated in the Petition, "In view of their conclusion that the distribution of the handbill was not protected because it did not relate to the employer-employee relationship, *the majority did not reach the question whether the activity was 'unlawful'* (R. 17)." (Petition, 9, fn. 2). (Italics supplied). The Board stated in its decision that "*We do not reach and do not decide the question,* secondarily raised by Respondent [Jefferson Standard Broadcasting Company], whether the handbill in question constituted actionable defamation." (R. 17, fn. 18). (Italics supplied).

Since 1939 the rule of this Court has been that neither the Wagner Act nor the Labor-Management Relations Act, 1947 protect concerted activities where il-

legal means are used and, therefore, no remedy can be given in such cases when discharges of employees for illegal acts occur. *National Labor Relations Board v. Fansteel Metallurgical Corporation*, 306 U. S. 240. See *National Labor Relations Board v. The Sands Manufacturing Company*, 303 U. S. 332; *Southern Steamship Company v. National Labor Relations Board*, 316 U. S. 31. As stated in *UAW v. Wisconsin Employment Relations Board*, 336 U. S. 245, 257-258, "but because . . . legal conduct may not be made illegal by concert, it does not mean that otherwise illegal action is made legal by concert."

It is respectfully submitted that the avoidance of the issue of lawfulness by the Board in its decision and this Petition is sought to be justified on a ground which is an inversion of the true situation. The first question which should be reached by the Board and which the Board should decide is the status of the conduct in this case under the clearly established rules of this Court rather than the legal propriety of the Board's rule in this case which the Circuit Court of Appeals has termed of "vague content."

It is further respectfully submitted that the Petition misconceives the function of the writ when, under the procedural circumstances of this case, it seeks to avoid the administrative agency's burden of making the initial finding on the legality of the conduct in question by transferring the burden to this Court of determining the validity of the broad and indefinite rule of administrative power which the Board has asserted in its decision and this Petition. It cannot be known at this stage of the proceeding whether the Board will find the conduct lawful or unlawful. If the Board finds the conduct unlawful, then it will not have been necessary for this Court to have ruled on

the question of whether the Board's broad rule of administrative power is sound. If, on the other hand, the Board should find the conduct lawful and issue an order, such order would not become legally enforceable unless the appropriate Circuit Court of Appeals granted a petition for enforcement under Section 10 of the Act after a full review of the case upon complete findings by the Board.

In the event such a case were to develop, this Court would not be bound by its denial of the writ, to follow the rule of the court below on the question of the proper definition of the scope of protected activities under Section 7 of the Act. See *White v. Higgins*, (C. A. 1) 116 F. (2d) 312, 317, where it is stated that:

> "When the doctrine of law of the case is being invoked in an intermediate appellate court, such as the Circuit Court of Appeals, another consideration enters. After we affirm a judgment on the ground that our decision on an earlier appeal has become the law of the case, the Supreme Court is nevertheless free to take the case on certiorari and reverse our judgment . . . The Supreme Court frequently does so . . . Sometimes it does so even where application for certiorari to review our earlier judgment had been applied for and denied."

In view of these considerations it does not appear that the granting of the writ at this stage of the proceeding is fundamental to the further conduct of the case even if the standards otherwise applicable to the appropriateness of reviewability of final judgments were satisfied.

Turning to a consideration of the reasons presented in the Petition for granting the writ, the first conten-

tion of the Petitioner is that "The issue is recurring and is one of fundamental importance in the operation of the statute." (Petition, 11). The quoted statement is, of course, a proper statement of an applicable rule of this Court. It is respectfully submitted, however, that the quoted statement is a conclusion not supported by the facts of this case. The Petition itself states, in reviewing cases allegedly in conflict with the decision of the court below, that "While the legality or illegality of the concerted activity has been found to be significant and *often times controlling,* (See e.g., *American News Company,* 55 NLRB 1302), (Strike for wage increase not authorized by War Labor Board), it has *by no means been determinative in all situations.*" (Petition, 12). (Italics supplied).

It is our view that the cases cited in the Petition in suport of Petitioner's claim of alleged conflict can be reconciled under the established rule that unlawful means for a lawful object or lawful means for an unlawful object are not protected by Section 7. (See *infra.,* pages 11-13). It is further submitted that the question of whether it is appropriate to grant the writ turns upon the recurring nature and the fundamental importance of actual cases rather than the dicta and the principles stated by the Board or the courts in such cases.

Petitioner contends, as an additional reason for granting the writ, that "In the present state of the law, neither employer nor employee can move with assurance when any unorthodox type of activity is involved in a labor dispute. The employees risk discharge; the employer may be found guilty of an unfair labor practice with liability for back pay." (Petition, 11). The object of certainty in legal rules is desirable, although not always capable of achievement. The Board ad-

mitted, however, in its decision, as distinguished from its Petition, that it was not "attempting to formulate a test which will decide every imaginable case involving similar questions as to the scope of Section 7." (R. 17). And the dissenting member of the Board charged that the decision of the Board would produce uncertainty:

> "I find it a startling decision—startling because it necessarily sets aside principles which this Board with court sanction has heretofore recognized as the proper test of concerted activity; startling because it has shriveled the previously recognized area of statutory protection for concerted activities and *left employers, employees, and the Board itself without any certain standards to mark the remaining greatly circumscribed area.*" *(R. 28-29).* (Italics supplied).

In further contrast to the object of certainty which the Petition contends will be accomplished by the granting of the writ and the review of this case, there is the language of the rule which the Petition deems sound. The Petitioner takes the view that the decisions of the courts on the question involved in this case can be reconciled on the basis of the following broad rule:

> "The decision in each case turned on the fact (sic) that the employees' concerted activities, considered in the light of all the circumstances, including the nature of their acts and the impact of the conduct on the employer's legitimate interest, were *unjustifiable.* Each case involved an appropriate adjustment of the 'conflicts and interest between employer and employees.'". (Petition, 19). (Italics supplied).

It is respectfully submitted that, whatever the merit of the above rule, it is not a rule of automatic appli-

cation. From the standpoint of certainty, it is our view that the specific results of the broad rule stated in the above quotation from the Petition cannot be successfully predicted by private parties subject to the Act in advance of its application by the Board.

The Board seeks to show that the so-called rule of "indefensibility" which it applied in the instant case dates back to *Harnischfeger Corp.*, 9 NLRB 676, (Petition, 11). That case was decided November 8, 1938. If the meaning of the word "indefensible" did not then include the illegal acts involved in *Fansteel* (illegal seizure of property), *Sands* (breach of contract) and *Southern Steamship Corporation* (mutiny), *supra*, all of which cases were before this Court after the date of *Harnischfeger*, it is difficult to accept the proposition that the same word now includes the privileged publication of fair comment involved in the instant case.

The Petition sets out on pages 18 to 19 the decisions of this Court and of the Circuit Courts of Appeals which it claims to be in conflict with the decision of the court below. It is respectfully submitted that there is no such conflict.

United Automobile Workers v. Wisconsin Employment Relations Board, supra, did not raise the question of whether discharges for the employee conduct there involved were violations of the Act because the conduct was protected by section 7. This Court emphasized that the employer had not resorted to discharge or other retaliatory measures and its motive in bringing the state law into operation was not even alleged to be antiunion. The Court decided that there was no fixed Board interpretation that all work stoppages are protected activities and therefore the state

law was not required to be ruled invalid as in conflict with a Federal law.

In *Maryland Drydock Co. v. National Labor Relations Board,* (C. A. 4) 183 F. (2d) 538, the Court ruled that the publication of libelious matter was not protected by section 7 of the Act.

Albrecht v. National Labor Relations Board (C. A. 7) 181 F. (2d) 652, upheld the Board's decision that section 7 of the Act does not protect the refusal of foremen to perform, during a strike of rank and file employees in which the foremen were not involved, certain duties which were essential for the protection and preservation of the employer's plant. The Board found the refusal of the foremen to be a "serious breach of their duty to the Respondent [employer]." See *National Labor Relations Board v. Rockaway News Supply Co.*, United States Supreme Court, October Term, 1952, *decided* March 9, 1953.

In *Joanna Cotton Mills Co. v. National Labor Relations Board,* (C. A. 4) 176 F. (2d) 749 the purpose of the conduct was not the "mutual aid or protection" specified in section 7 but rather the purpose of an individual to get rid of, or humiliate, a supervisory employee with whom he was angered because of the supervisor's rebuke of the employee for operating a punch board or raffling device. The Court, in reversing the Board, stated that there was no evidence upon which it could have reasonably been thought that the dismissal of the supervisor would have been of aid or protection to the employees in any proper sense.

In *National Labor Relations Board v. Reynolds International Pen Co.*, (C. A. 7) 162 F. (2d) 680, the Court, in reversing the Board, held there was no evidence to show that the discharges in question had an antiunion motive, that the burden of proof to show dis-

crimination was on the Board—not the employer and that a walkout to protest the demotion of a foreman because of sympathy with him not related to a labor dispute was not protected by section 7 of the Act.

National Labor Relations Board v. Montgomery Ward Co., 157 F. (2d) 486, held the Board erred in ruling that the refusal of workers at one plant of the employer, which was not on strike, to process orders from another plant which was on strike is protected under section 7 of the Act. The Court, relying upon such cases as *National Labor Relations Board v. Sands Manufacturing Co., supra,* ruled there was a breach of the contract of hire not protected by section 7 of the Act.

It is respectfully submitted that none of the decisions relied upon by the Board go so far as to hold that the publication of matter of non-libellous character for an object held lawful by the Board is not protected by section 7 of the Act. See *Newell, Slander and Libel* (4th ed.) pp. 550-551; *State v. Greenville Publishing Co.*, 179 N. C. 720; *Lewis v. Carr*, 178 N. C. 578.

It is respectfully submitted, for all of the foregoing reasons that an adequate basis has not been presented by the Petition for the granting of the writ.

OPPOSITION TO PETITION FOR LEAVE TO INTERVENE

Respondent respectfully prays that if the petition for writ of certiorari is denied then the petition of the Company for leave to intervene should also be denied. See *U. S. v. Paramount Pictures, Inc.*, 334 U. S. 131, 176-178. If the petition for writ of certiorari is granted, Respondent states no objection to participation of the Company either as intervenor or as amicus curiae.

The petition for leave to intervene does not cite any

legal authority in support of its contentions. It is believed that the applicable rules of law are as follows:

(1) Respondent had the legal standing to seek review of the decision and order of the Board in the United States Court of Appeals for the District of Columbia Circuit by virtue of the express terms of Section 10 (f) of the Act. *Amalgamated Workers v. Consolidated Edison Company,* 309 U. S. 261, 266; *Albrecht v. National Labor Relations Board, supra, American Newspaper Publishers Association v. National Labor Relations Board,* United States Supreme Court, October Term 1952, No. 53, *decided* March 9, 1953.

(2) The Company could not be made a party respondent to the case before the Circuit Court of Appeals because in a proceeding under Section 10 (f) the petitioner can only contest the order of the Board. He cannot secure its enforcement. *Albrecht v. National Labor Relations Board, supra.* In *American Newspaper Publishers Association v. National Labor Relations Board,* 190 Fed. (2d) 45, the U. S. Court of Appeals for the Seventh Circuit so ruled in granting the Board's motion to strike from the caption of the petition the words "International Typographical Union" and certain named officers of such Union. The language of section 10 (f) of the Act provides only that the Board is required to be served with the petition for review.

The fact is that the Board on December 13, 1951, served its answer in the proceeding below upon Guthrie, Pierce & Blakeney, Att: *Whiteford S. Blakeney,* Esquire, Johnston Building, Charlotte, N. C., and Cochran, McClenaghan & Miller, Att: *F. T. Miller, Jr.,* Esq., Law Building, Charlotte, N. C., Counsel for Respondent before the Board. (R. 9). The oral argument before the

U. S. Court of Appeals for the District of Columbia Circuit was held April 16, 1952. (R. 265). The Company, therefore, had four months during which it could have moved for leave to intervene in the proceedings before the court below. The Company chose not to intervene. The fault it charges is its own.

The statements made in the brief in opposition to the petition for writ of certiorari are also applicable to the substantive matter set forth in the petition for leave to intervene.*

* It is assumed that the statement purportedly made by the "head of the International Union" (Petition for leave to Intervene, 11), although irrevelant, is not intended to be prejudicial. The undersigned have been authorized by the International President of the International Brotherhood of Electrical Workers to state that he did not make the quoted statement or any other statement having the same meaning to any person. The quoted statement is drawn from the transcript of record, pages 221-222 and was given in testimony by a Mr. Charles H. Crutchfield, Vice President and General Manager of the Company, on cross examination by Counsel for the Board. (R. 135). The person to whom Mr. Crutchfield attributed the statement is one of approximately 150 representatives on the staff of the International Union. It may also be noted that neither Respondent Local Union 1229 nor the International Brotherhood of Electrical Workers was represented by legal counsel at the hearing before the Trial Examiner of the Board either for the purpose of direct or cross examination.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied and that the petition for leave to intervene should also be denied.

Respectfully submitted,

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MARCH 30, 1953.

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No. 15

In the Supreme Court of the United States

October Term, 1953

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

LOCAL UNION NO. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, (AFL), *Respondent*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR RESPONDENT

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On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR RESPONDENT

OPINION BELOW

The opinion of the court below (R. 265-270) which unanimously reversed the decision of the National Labor Relations Board and remanded the case for further proceedings is reported at 202 F. 2d 186.

JURISDICTION

The judgment of the court below (R. 270-271) was entered on November 20, 1952. The petition for a writ of certiorari, filed on February 17, 1953, was granted on May 4, 1953 (R. 275). The jurisdiction of this Court is invoked under 28 U.S.C.

1254, and under Section 10 (e) and (f)[1] of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether the terms of Section 7 providing that "Employees shall have the right . . . to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection" may properly be construed as vesting broad power in the National Labor Relations Board to remove from the scope of such right any concerted activity which it deems "beyond the pale" or "indefensible under the circumstances" even though such concerted activity is a lawful means for a lawful object and does not contravene any basic policy of the Act or of related federal statutes.

STATUTES INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V Secs. 151, *et seq.*) and the Communications Act of 1934, as amended (48 Stat. 1105, 47 U.S.C., Secs. 151, *et seq.*) are set forth in the Appendix, *infra*, pages 55-65.

The provisions of the National Labor Relations Act, as amended, which are most directly involved in this proceeding are as follows:

UNFAIR LABOR PRACTICES

Sec. 8 (a) It shall be an unfair labor practice for an employer—

---

[1] See *American Newspaper Publishers Association* v. *National Labor Relations Board and International Typographical Union*, 190 F. 2d 45.

(1) To interfere with, restrain, or coerce employees in the exercise of the *rights guaranteed in section 7*;

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the *right* to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other *concerted activities for the purpose of collective bargaining or other mutual aid or protection*, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3). (Italics supplied.)

STATEMENT

I. The Facts

At the time of the events which gave rise to this case, Local Union 1229 of the International Brotherhood of Electrical Workers, AFL (hereinafter referred to as "Local 1229" or the "Union") was the duly certified collective bargaining agent of the technicians employed by the Jefferson Standard Broadcasting Company (hereinafter referred to as the "Company") which operated Radio Station WBT in Charlotte, North Carolina. Local 1229 was certified by the Board on May 9, 1949 (R. 261-262) having won the election by a vote of twelve-to-two out of a total number of

sixteen eligible voters (R. 259-260). The Union held a collective bargaining agreement covering the technicians employed at WBT since 1939. The Columbia Broadcasting System was the signatory employer until 1945 when the station was sold to the Jefferson Standard Broadcasting Company. The Company was the signatory employer after that date (R. 47, 93-94).

The negotiations for a collective bargaining agreement which resulted in the labor dispute here involved commenced in December, 1948. Through the months of November and December of 1948 and in February, 1949 the Company advertised in the newspapers for twelve technicians, the exact number of the employees voting for the Union in the certification election (R. 47). The negotiations came to an impasse on the issue of the appropriate language providing for arbitration of discharges of employees. The current agreement provided that the arbitrator was authorized to determine whether there was just cause for discharge. The Union wished to continue this language. The Company, however, insisted upon unlimited discretion as to the cause of discharge reserving the power to the arbitrator to determine only the question of whether the Company had discharged the employee for the reasons assigned by the Company for such discharge (R. 48-49). During the negotiations the Company admitted that its proposed clause could be interpreted to give it authority to "fire a man for parting his hair on the wrong side" or "for wearing a red necktie rather than a blue necktie" but

asserted that it would not exercise its discretion in this manner (R. 49).

On July 9, 1949 Local 1229 commenced peaceful picketing of the station but did not strike. The operations of the station continued without interruption during the entire period of the labor dispute. The Company did not claim that such picketing was unlawful (R. 224-225) and the Board upheld the Trial Examiner's view that Section 7 protected the picketing (R. 14, fn. 7). The placards used in the picketing which contained standard subject matter concerning the labor dispute used the words "The Technicians at Radio Station WBT" in large type (R. 246-248). The words "Radio Broadcast Technicians," in large type, were also used in addition to the Local Union number and other designations of the Union in a number of these placards (R. 49-50, 249-251). The term "technicians" is the occupational title for the employees performing the work of manual operation of the equipment at radio and television stations.

On July 14, 1949 the Company, which had previously engaged only in radio broadcasting, made its first television broadcast (R. 50). The Company acquired the privilege of operating its television station by virtue of a license issued by the Federal Communications Commission. Such licenses are granted only after a finding by the Commission that the "public interest, convenience and necessity will be served thereby" (Act, Sec. 307(a), *infra*, p. 64).

The Commission has determined that the carrying of local live programs is an essential element

of the public interest and that this is in accord with the intent of Congress in enacting the Communications Act of 1934, as amended, (*infra*, pp. 44-45). The Commission has also stated that there is a need for public criticism of program service, as well as government action, to improve such service, (*infra*, pp. 45-47).

The Company had not purchased the technical equipment needed to telecast local live studio programs or local events, such as sport contests, remote from the studio (R. 117-118). A company witness testified that additional personnel would be required if such equipment were purchased (R. 124).

There was admitted public dissatisfaction with the station's programs (R. 229, 238) and the Company itself published information showing that its programs and announcements were limited to motion picture film and slide productions (R. 234-236).

During the last seven working days of August, 1949 and the first two in September, 1949 Local 1229 authorized and distributed numerous copies of the following handbill both at the picket line before the radio and television station and at other places in the City:

"IS CHARLOTTE A SECOND-CLASS CITY?

You might think so from the kind of Television programs being presented by the Jefferson Standard Broadcasting Co. over WBTV. Have you seen one of their television programs lately? Did you know that all the

programs presented over WBTV are on film and may be from one day to five years old. There are no local programs presented by WBTV. You cannot receive the local baseball games, football games or other local events because WBTV does not have the proper equipment to make these pick-ups. Cities like New York, Boston, Philadelphia, Washington receive such programs nightly. Why doesn't the Jefferson Standard Broadcasting Company purchase the needed equipment to bring you the same type of programs enjoyed by other leading American cities? Could it be that they consider Charlotte a second-class community and only entitled to the pictures now being presented to them?

WBT TECHNICIANS"

(R. 244)

The contents of the handbill were prepared by Union officers and approved for distribution by the Executive Committee of the Local. The handbills were printed by the Union and distributed by Union pickets. (R. 15, 52, 57, 103-104).

On September 3, 1949 the Company discharged the nine union members involved in this proceeding (R. 54) who had been engaged in picketing the station and were later found by the Board to have either distributed or being responsible for the distribution of the handbill (R. 18, 52-54).

Although the hearing before the Trial Examiner of the Board did not take place until approximately one-half year after the publication of the handbill, no valid evidence was introduced by the

Company or otherwise to prove that the publication of the handbill had resulted in a loss of advertising accounts or revenues. The evidence on this point was confined to the expression of "concern" by television equipment distributors and dealers as to the effect of the handbill on their sale of sets (R. 16, 53). The evidence with respect to losses during the first four months of television operation were not proved to be due to the publication of the handbill (R. 143-144). In fact, the first portion of this four month period of loss in television operations took place prior to the publication of the handbill. Operations began in July and the handbill was not distributed until the end of August (R. 50, 168). There was no evidence to show that these losses were not the ordinary experience of television stations commencing operations or were not caused by the traditional picketing which had taken place before the publication of the handbill or were not the result of admitted public dissatisfaction with the quality of the station's programs (R. 238-240).

Local 1229 filed unfair labor practice charges against the Company on September 13, 1949 for making a mass discharge of the employees involved in this proceeding. On the basis of these charges the Regional Director of the Fifth Region issued a complaint dated January 31, 1950 against the Company alleging, among other things, that the Company had engaged in unfair labor practices in violation of Sections 8 (a) (1) and (3) and Section 7 of the Act. Hearings were held before a Trial Examiner in March and July, 1950 (R. 43-46).

II. Trial Examiner's Intermediate Report and Recommended Order

The Trial Examiner issued his intermediate report on August 21, 1950 (R. 40-90). In this report the Trial Examiner found that the Company's act of giving an "unsatisfactory" endorsement to Hicks in August, 1949, which the Federal Communications Commission disregarded, was clearly calculated to discourage any further concerted activity of the employees toward obtaining an arbitration clause suitable to them (R. 72). He also concluded that "by such conduct respondent (Company) coerced and restrained its employees in the exercise of the right of self organization and to engage in other concerted activities for purposes of collective bargaining and other mutual aid or protection in violation of Section 8 (a) (1) of the Act" (*ibid.*).

With respect to the discharges of the nine employees the Trial Examiner found such discharges to be in violation of Section 8 (a) (1) and (3) of the Act. He found on the evidence in the record and on his judgment of the credibility of the witnesses (R. 59) that the writers of the handbill honestly believed it to be true, although it was, in his judgment, slightly inaccurate (R. 58-59). He relied upon the decision of Judge Learned Hand in *National Labor Relations Board v. Peter Cailler Kohler, Swiss Chocolate Co.*, 130 F. 2d 503, in his conclusion of law that the act of publication of the handbill here in issue, although perhaps prejudicial to the employer, was, nevertheless, protected activity under Section 7 of the Act (R.

59-62, 40-41). He recommended that the discharged employees be offered reinstatement.

III. The Board's Decision and Order

The National Labor Relations Board issued its decision and order on June 26, 1950 with one member dissenting (R. 10-39). The Board agreed with the Trial Examiner that the Company had violated Section 8 (a) (1) and Section 7 of the Act by giving Hicks an "unsatisfactory rating" on his operating license from the Federal Communications Commission but overruled his recommendation on the matter of the discharges. The Board concluded that the publication of the handbill was not protected by Section 7 of the Act (R. 17). It found that the object of the publication was lawful (R. 16). The Board, although apparently critical of their qualifications, found that ". . . the employees purported to speak as experts in the interest of consumers and the public at large" (R. 16). It did not find that the statements contained in the handbill were untrue or libellous. The Board stated that "In *our judgment*, these tactics in the circumstances of this case were hardly less 'indefensible' than acts of physical sabotage" (R. 16) and ". . . without attempting to formulate a test which will decide every imaginable case involving similar questions as to the scope of Section 7, we *hold* that the employees in this case went *beyond the pale* when they published the 'second-class' handbill" (R. 17). On the basis of these rulings the Board dismissed the complaint insofar as it alleged that the Company

violated Section 8 (a) (1) and (3) of the Act by the discharges (italics supplied) (*ibid.*).

A dissenting opinion was filed by Member Murdock, who was of the view that the Trial Examiner's conclusions with respect to the discharges should be accepted by the Board (R. 25-37). He adverted to the fact that the majority did not deny the substantial accuracy of the handbill and that those who drafted and distributed it on the picket line and elsewhere believed it to be true. He interpreted the decisions of the courts to lay down the rule that concerted activity such as is involved in this case loses its protection only if it is "unlawful." He further concluded that there was nothing unlawful in either the publication of the handbill or its objective. He said that the employees in this case "did no more than to point out to the public what in large measure they already knew—that the Employer's TV programs consisted largely of canned film of varying degrees of antiquity with no live local talent as in other cities; and to incite a demand for better programs and the equipment which would make them possible. Unlike the activity held protected in the *Hoover* case, this handbill did not and could not result in any present financial loss to the Respondent" (R. 35).

IV. The Decision of the Court of Appeals

Local 1229 filed a petition for review under Section 10 (f) of the Act with the court below to review and modify the Board's order insofar as it dismissed the allegations of the complaint relating to the discharges (R. 1-7). The court

below recognized that the broad language of Section 7 which assures employees the "right to . . . engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid and protection" does not cover all concerted activities which are within the literal scope of this language (R. 267). As illustrations of activities excluded from the scope of Section 7, the court noted concerted activities expressly forbidden by the amended Act and also concerted activities involving the use of "unlawful means" as, for example, "A strike in contravention of the purpose of the Act" (*ibid.*). The court defined the area withdrawn from the scope of the quoted language of Section 7 as "Those concerted activities which contravene either; (a) specific provisions *or basic policies of the Act or of related federal statutes*, or (b) specific rules of other federal or local law, that is [are] not incompatible with the Board's governing statute (id.). (Italics supplied) The court went on to say that conduct thus protected under Section 7 is "lawful" conduct. The court's opinion approved a statement by the Board in the *Hoover Company* case, 90 NLRB, 1614, 1621 that the Board is "not free . . . to measure concerted activity in terms of whether the conduct is *wise* or *fair* or satisfies *standards which we* [*the Board*] *think desirable*" (R. 268). (Italics supplied.)

It was in this sense of the court's definition of "lawful" and "unlawful" conduct that the court stated that the Board had failed to make an appropriate determination of the legality or illegality of the use of the handbill. In particular, the court

stated that "by giving 'indefensible' a vague content different from 'unlawful' the Board misconceived the scope of the established rule" (R. 268).

The court denied the Union's petition for modification and enforcement of that part of the order involved in this proceeding and remanded the case to the Board for "further proceedings not inconsistent with this opinion." The Court of Appeals took the position that "sound practice in judicial review of administrative orders precludes this court from determining 'unlawfulness' without a prior consideration and finding by the Board" (R. 269-270).

SUMMARY OF ARGUMENT

I

Section 7 of the Act guarantees employees "the right . . . to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ." There is no express term in the Act providing exceptions from the scope of this language. Nor does the Act expressly delegate authority to the National Labor Relations Board to make exceptions.

The current of judicial decisions, however, has established the rule that concerted activities inconsistent with specific provisions of Federal or State law not incompatible with the Act, or the basic policies of the Act or of related Federal statutes, are not within the scope of Section 7. The Board contends that it has a power "in addition" to deny protection to concerted activities which it deems "indefensible under the circumstances" (Pet. br. 26).

The Board's assumption of administrative

power not limited by statutory provisions or even the policies of this Act or of related Federal statutes has no foundation in law. The actual history of litigation under Section 7 shows an almost uniform refusal on the part of this Court and the courts of appeals to accept the administrative judgment of the Board in similar Section 7 cases. The decisions of this Court and the decisions of the courts of appeals, to the extent that such decisions of the courts of appeals are valid, are based on the principle that concerted activities which are not in violation of specific provisions of law, lose the protection of Section 7 if they contravene the purposes or policies of this Act or of related Federal statutes. The legislative history of the 1947 amendments approves these decisions. The language chosen by the draftsmen of the House Conference Report to state that "unlawful or other improper conduct" is not within the protection of Section 7 must be read in the light of these decisions. If the words "other improper conduct", which were not enacted into law, require a statutory construction of Section 7 to provide the unlimited administrative discretion contended for by the Board then serious questions of constitutionality would be raised.

This Court has ruled that legislative power may not be delegated even to the President of the United States. *Panama Refining Co. v. Ryan*, 293 U.S. 388; *Schechter Corp. v. United States*, 295 U.S. 495. Administrative power must be exercised within the limit of adequate and definite standards. Under the Constitution the Board cannot be given a "roving commission" to find con-

certed activities "beyond the pale" or "indefensible under the circumstances". The fact is, however, that Congress did not grant such unlimited authority to the Board in Section 7 cases and the Courts have decisively repudiated the claims of the Board in this regard.

II

In the instant case the employees, during the course of a labor dispute, published a handbill stating with substantial accuracy the fact that the employer did not have equipment available to produce live local television programs. The Board found the purpose of publication lawful. It also found there was no wilful misrepresentation in the handbill and approved, because it did not modify, the finding of the Trial Examiner that there is no evidence to show that the employees intended maliciously to injure the employer's business (R. 11, 58-59).

Section 7 of the Act protects union publications made for the purpose of winning the favor of the public on a non-labor issue in order that the union may acquire the support of public opinion in its labor disputes (*NLRB v. Peter Cailler Kohler*, 130 Fed 2. 503 (C.A. 2)). The Board in its decision recognized that "the employees purported to speak as experts, *in the interest of the consumers and the public at large*" (R. 16). This was indeed the actual case. The employer acquired the privilege of operating a television station by virtue of a license issued by the Federal Communications Commission upon the basis of a finding required by the Communications Act of 1934 as amended,

that "the public interest, convenience and necessity will be served thereby" (Sec. 307 (a), *infra*, p. 64). The Commission has determined that it is the Congressional objective of the Communications Act to make the character and quality of program service a factor in determining whether a licensee is operating in the public interest. The Commission has also found that the carrying of local live programs is a necessary ingredient of adequate program service (*infra*, pp. 41-45).

The union publication of the fact that the company did not carry such local live programs was therefore in the public interest, particularly since the Commission has stated there is a need for public criticism as well as government action to improve program service. The union publication could only have the effect of accelerating the employer's improvement of his programs (*infra*, pp. 45-47). This was in the public interest and the Board's conclusion that such publication was "hardly less indefensible than acts of physical sabotage" is without foundation in reason or law.

The circumstances related by the Board in support of its conclusion are irrelevant to the policies of this Act. Publication of the handbill over the occupational title of the employees i.e. "WBT Technicians" was as valid as publication over the name of the local union, its number and affiliation. Section 7 protects the right of "employees" and is not limited to labor organizations (*NLRB v. Schwartz*, 146 F. 2d 773, 774 (C.A. 5)). Certainly such a minor procedural regulation of union activity cannot be inferred from the policies of the Act. Nor can there be inferred from such statutory

policies a test limited to the "expectable reaction" of an employer. Section 1(b) of the Act makes it clear that the rights of both employers and employees are accorded within the scope of "the general welfare" and the "public interest".

The public policy of the United States is to protect freedom of speech. This policy is found in the Constitution, at common law and indeed in this very Act. The decision of the Board would encourage the suppression of opinion on matters of public interest if employees are the source of that opinion. This, unlike the maintenance of discipline in the process of production, is not an essential element of a balanced society.

The concerted activity of publication of the handbill did not contravene any policy of this Act or of related Federal statutes. It is therefore protected by Section 7. *A fortiori* the court below did not commit error in remanding the case to the Board for further proceedings in accordance with the Court's legal interpretation of Section 7.

ARGUMENT

The Board's Dismissal of the Complaint Is Not In Accordance With Law

Section 7 of the Act guarantees the rights of employees to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. There is no express exception to the scope of this language in the statute.

The current of judicial decisions on the scope of Section 7, however, has clearly established the rule that certain labor activities covered by the literal language of Section 7 are nevertheless not

within its scope. Concerted activities within the literal language of Section 7 may be excludable either because of their object or because of the means used to accomplish the object.

In the instant case, no question is raised with respect to the object of the concerted activity of publication of the handbill because the Board found the purpose of such activity to be lawful (R. 16).

The issue is therefore confined to the question of the status under Section 7 of the means used to accomplish a lawful object.

The Board recognizes that the means used in the instant case were not independently unlawful. Respondent concedes for the purpose of this argument that there is an area of exception from the protection of Section 7 of concerted activities for a lawful object, even though the means used are not independently unlawful. The controversy in the instant case is over the standards which are to be applied in determining which concerted activities in this latter area are removed from the protection of Section 7.

This case does not raise the issue of whether *all* concerted activities for mutual aid or protection are within the scope of Section 7. Nor does it raise the issue of whether the sole exception to the literal scope of Section 7 is limited to concerted activities which are independently in violation of state or federal law.

The court below did not rest its decision on either of these propositions. Its decision rests

upon the proposition that concerted activities (for a lawful object) which are not in violation of Federal or State law, are protected by Section 7 unless such concerted activities contravene basic policies of the Act or of related Federal statutes. The court below used the phrase "lawful conduct" to apply to conduct which satisfies this test (R. 267-268). It used the word "unlawfulness" to apply to conduct which, although not independently in violation of specific Federal or State law, nevertheless contravenes a basic policy of the Act or of related Federal statutes. And it was this very question of "unlawfulness" which was remanded by the court of appeals to the Board for further proceedings (R. 269-270).

The Board, in its brief and in its decision, has taken the position that the applicable standard is its own informed judgment of whether the concerted activity is "indefensible" under the circumstances, or, "beyond the pale".

Respondent contends the Board's position amounts to an unfounded request for judicial validation of its exercise of discretion, without ascertainable or reviewable limit, to remove from Section 7 concerted activities which are not independently unlawful.

It is the contention of the Respondent that such concerted activities, (i.e. for a lawful object and not independently unlawful) are not removed from the scope of Section 7 unless a valid determination has been made that they contravene a basic policy of the Act or of related Federal statutes.

A. Concerted Activities Which are Not In Violation Of Law are Within the Scope of Section 7 Unless They Contravene a Basic Policy of the Act or of Related Federal Statutes.

1. The language of the Board, in its decision and brief, shows on its face that the Board is seeking to delegate to itself unlimited administrative discretion in the interpretation of rights guaranteed by Section 7.[2]

The Board's holding that the employees in this case "went beyond the pale" in publishing the handbill is based on a standard which is empty of meaning. The word "pale" implies the notion of a circumference but there is no basis, other than the personal views of the Board members to determine the location of the circumference or even the considerations which determine the area in which this circumference may be expanded or contracted. If approved, this "test" would amount to the establishment of the rule of *ipse dixit* in determining

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[2] The author of an article entitled *"Unprotected Activity and the NLRA,* 39 Va. Law Rev. 421 (May 1953) recognizes that a major ground of his support of the Board's position in the instant case is his view that the disposition of the *Fansteel* case "really was a matter *wholly for the Board's discretion.*" (at p. 427). Furthermore, in a phrase reminiscent of an interesting field somewhat removed from the law, he opines that "several hundred labor arbitrators can't be wrong" but fails to distinguish the difference between questions of discharge arising under a collective bargaining agreement and questions of retaliatory discharges interfering with protected concerted activity which arise under Sections 8(a)(1) and (3) and Section 7 of the Act. See 3 CCH Law Journal 89, 92-93; 60 Yale L.J. 529.

the scope of Section 7 of the statute. Such a rule is certainly not in accord with legal process.

The Board's opinion, also states that in the judgment of the majority the tactics of the employees "in the circumstances of this case, were hardly less 'indefensible' than acts of physical sabotage" (R. 16). It is respectfully submitted that this standard on its face is unreasonable; nor does it have a foundation in law. Physical sabotage is a public wrong creating serious danger to life and property. It is a crime, the commission of which rightly exposes the wrongdoer to heavy punishment, including long sentences of imprisonment, regardless of the motive for the criminal action. The publication of a handbill in the interest of consumers and the public is the very opposite of a public wrong. It is not a crime nor is it a tort.

The actual history of litigation decisively repudiates the idea that Congress intended to vest a large reservoir of administrative discretion in the Board to interpret the scope of Section 7.

In the 14 years which have elapsed since the decision of this Court in *NLRB v. Fansteel Metallurgical Corp.*, 306 U.S. 240 (Feb. 27, 1939), the administrative judgments of the Board on the scope of Section 7, and indeed of Section 10(c), have generally not been accepted by either this Court or the courts of appeals.[3] See Cox, "*The Right to Engage in Concerted Activities*", 26 Ind. L. J. 319, 344, where it is stated that the courts

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[3] Among the cases cited by the Board in its brief in which the Courts did not accept the administrative judg-

have shown no tendency to defer to the National Labor Relations Board in Section 7 cases and that *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111, upon which petitioner's brief relies (p. 19), has not been cited in any of the opinions in which the Board's application of Section 7 has been reviewed

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ment on the scope of protected concerted activity are the following:

C. G. Conn Ltd., 10 NLRB 498 (Dec. 18, 1938) *enf. denied*, 108 F. 2d 390 (C. A. 7) (Dec. 22, 1939).

Condenser Corp., 22 NLRB 347, 430-431 (March 29, 1940) *enf. den.* 128 F. 2d 67 (C. A. 3) (March 25, 1942)

Draper Corp., 52 NLRB 1477 (Oct. 20, 1943) *enf. denied*, 145 F. 2d 199 (C. A. 4) (Oct. 6, 1944)

Fansteel Metallurgical Corp., 5 NLRB 930 (March 14, 1938) *enf. denied*, 306 U. S. 240 (Feb. 27, 1939)

Home Beneficial Life Ins. Co., 69 NLRB 32 (June 26, 1946) *enf. denied*, 159 F. 2d 28 (C. A. 4) (Jan. 7, 1947)

Indiana Desk Co., 58 NLRB 48 (Sept. 4, 1944) *enf. denied*, 149 F. 2d 987 (C. A. 7) (June 15, 1945)

Montgomery Ward Co., 64 NLRB 432 (Oct. 24, 1945) *enf. denied*, 157 F. 2d 486 (C. A. 8) (Oct. 23, 1946)

Sands Mfg. Co., 1 NLRB 546 (April 17, 1936) *enf. denied*, 306 U. S. 332 (Feb. 27, 1939)

Southern Steamship Co., 12 NLRB 1088 (May 18, 1939) *enf. denied*, 316 U. S. 31 (April 6, 1942)

See *Hoover Co.* v. *National Labor Relations Board*, 191 F. 2d 380 (C. A. 6) (July 9, 1951)

cf. *Colgate-Palmolive Peet Co.* v. *National Labor Relations Board*, 338 U. S. 355 (Dec. 5, 1949)

National Labor Relations Board v. *Rockaway News Supply Co., Inc.*, 345 U. S. 71 (March 9, 1953)

National Labor Relations Board v. *Clara-Val Packing Co.*, 191 F. 2d 556 (C. A. 9) (August 30, 1951)

National Labor Relations Board v. *Guy F. Atkinson Co.*, 195 F. 2d 141 (C. A. 9) (February 29, 1952)

by the courts of appeals. See *UAW v. Wisconsin Employment Relations Board*, 336 U.S. 245, 255-257.

Nor is there any basis for the Board's contention (Pet. br. 26) that both the Board and the courts of appeals have been applying the same test of "indefensibility" used in this case, since early in the history of the Wagner Act. The Board in its brief (pp. 26-27) places heavy emphasis on the declaration in *Harnischfeger Corp.*, 9 NLRB 676, at p. 686 (Nov. 8, 1938) which was reiterated in *Armour and Co.*, 25 NLRB 989, at p. 996 July 27, 1940) that:

> "Section 7 of the Act expressly guarantees employees the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. We do not interpret this to mean that it is unlawful for an employer to discharge an employee for *any* activity sanctioned by a union or otherwise in the nature of collective activity. The question before us is, we think, whether this particular activity was so indefensible, under the circumstances, as to warrant [the employer] under the Act, in discharging the [employees] for this type of union activity."

It is respectfully submitted that the Board's use in the instant case of the identical word "indefensible" or the identical phrase "under the circumstances" which appeared in its decision 15 years ago in the *Harnischfeger Corporation* case, *supra*, is not the equivalent of a uniform and con-

sistent administrative construction of a statute over a long period of time. See *United States v. Citizens Loan and Trust Company*, 316 U.S. 209, *Dismuke v. U. S.* 297 U. S. 167. Board interpretations of the scope of Section 7 of the Act have been consistently rejected by this Court and the Courts of Appeals (*supra*, pp. 21-23). The very cases relied upon by the Board in its brief (pp. 27-28) to show that the Courts of Appeals under the Wagner Act have applied a holding "similar" to that contended for by the Board are cases in which the Courts of Appeals have not accepted the Board's administrative construction of Section 7 of the statute (p. 27). Indeed, the decision of this Court in *United Automobile Workers v. Wisconsin Employment Relations Board*, 336 U.S. 245, makes it clear that this Court does not consider itself bound by the administrative decisions of the Board on the scope of Section 7, (*ibid.*) (at pp. 255-257).

There has, in fact, been no settled interpretation by the Board of the meaning of its phrase "indefensible under the circumstances". Cf. *Hoover Co.*, 90 NLRB 1614, 1621 and R. 30-31.

In the instant case the phrase "indefensible under the circumstances" is used to deny the protection of Section 7 to the expression of fair comment on a matter of public interest. In *Harnischfeger Corporation*, *supra* and *Armour Company*, *supra* the Board considered it *defensible* to extend the protection of Section 7 to concerted refusals to work overtime and to engage in a partial interruption of production. Originally the Board applied this, or a similar test, to distinguish between major and minor crimes. For example, in

Standard Lime and Stone Company, 5 NLRB 106, 117 (Feb. 4, 1938), the Board refused reinstatement to employees who were given maximum sentences of ten years in the state penitentiary but ordered reinstatement of employees who were sentenced to serve six months imprisonment for conviction of the misdemeanor for conspiring to destroy property. The Board's position that *some* concerted activities are outside the scope of Section 7 was given the following meaning in its decision in *Fansteel Metallurgical Corporation*, 5 NLRB 930, 950 (March 14, 1938) (sit down strike involving trespass and violation of injunction):

> "We have, in some cases, declined to order reinstatement of striking employees despite the fact that the strike was caused by the employer's unfair labor practices. In one such case, the striker in question had been indicted for shooting and wounding a fellow employee during the course of a strike. In another, six strikers had pleaded guilty to a felony involving conspiracy to destroy property, and two had pleaded guilty to the felony of stealing dynamite and converting it to their own use; all eight had been sentenced to a maximum of ten years in jail. It cannot be said that the conduct of the strikers in the present case is analogous to the conduct in those instances. They were not engaged in sabotage. *Under the circumstances*, we do not feel that the respondent's contention should prevail." (Italics supplied)

A distinction between major and minor crimes was made by the Board in *Berkshire Knitting Mills*, 46 NLRB 955, 1003 (Jan. 12, 1943).

It is submitted that the consideration of the applicable rules of law are governed not by the accidental similarity of Board terminology but by the language of the statute, the decisions of the courts and the legislative history of the Act.

2. The applicable judicial decisions support the view that the discretion of the Board in Section 7 cases is limited by the policies of the Act.

This Court has not established a rule vesting unlimited and indefinable discretion in the Board to remove concerted activities from the protection of Section 7. In *NLRB v. Fansteel Metallurgical Corp.*, 306 U. S. 240, the Court had before it the question of the scope of Section 10(c) which authorizes the Board to issue remedial orders in unfair labor practice cases requiring the violator "to take such affirmative action . . . as will effectuate the policies of the Act." Although this section specifically vests discretion in the Board, as distinguished from the language of Section 7 which "guarantees" the "rights" of employees, the Court ruled that "The authority to require affirmative action to 'effectuate the policies' of the Act is broad but is not unlimited. It has the essential *limitations* which inhere in the very *policies* of the Act which the Board invokes" (*id.* at p. 257). The Court also stated that "There is not a line in the statute to warrant the conclusion that it is any part of the *policies of the Act* to encourage employees to resort to force and violence in defiance of the law of the land. On the contrary, the *pur-*

pose of the Act is to promote peaceful settlement of disputes by providing legal remedies for the invasion of the employees' rights" (*id.* at pp. 257-258).

As noted by the court below, the concerted action in breach of a collective bargaining agreement which was involved in *NLRB v. Sands Mfg. Co.*, 306 U.S. 332, 344, contravened a purpose of the Act (R. 267). See Cox, *"The Right to Engage In Concerted Activities"*, 26 Indiana L.J. 328-329. In *Southern Steamship Co. v. NLRB*, 316 U.S. 31 (concerted activity found to be in violation of the mutiny sections of the Criminal Code) this Court established the rule that "Congressional objectives" set forth in statutes other than the Act must also be taken into account by the Board in exercising its administrative power of reinstatement.

The Board cites two of the above cases *i.e. Southern Steamship Co. v. National Labor Relations Board, supra* and *National Labor Relations Board v. Sands Mfg. Co., supra*, together with *American News Company*, 55 NLRB 1302, in support of the proposition that "Under the Wagner Act both (sic) the Board and the courts had held that concerted activities inconsistent with the express provisions of the *basic policy* of the Act or of some related federal statutes were not within the statutory protection." (Pet. br. 26)

It is the view of the Board, however, that there is an *additional* area which is committed to its discretion, the exercise of which is limited by the phrase "indefensible under the circumstances" (*ibid.*). The Board relies upon the opinion of this Court in *United Automobile Workers v. Wiscon-*

sin Employment Relations Board, supra, in which reference was made to the Board's terminology of "indefensibility" in *Harnischefeger Corporation*, 9 NLRB 676, and the dictum stating agreement with certain decisions of the Courts of Appeals (*C. G. Conn Ltd. v. National Labor Relations Board*, 108 F. 2, 390 (C.A. 7), *National Labor Relations Board v. Condenser Corporation*, 128 F. 2, 67 (C.A. 3), *Home Beneficial Life Insurance Co. v. National Labor Relations Board*, 159 F. 2, 199 (C.A. 4) and *National Labor Relations Board v. Indiana Desk Co.*, 149 F. 2, 987 (C.A. 7)) to support its position calling for the vesting of broad administrative discretion in it to remove so-called "indefensible" activities from the protection of Sec. 7. It is respectfully submitted that the decision of this Court in *United Automobile Workers v. Wisconsin Employment Relations Board, supra*, does not support the claims of the Board for an "additional" area of administrative discretion.

In the first place, this Court cited the terminology employing the word "indefensible" in *Harnischfeger* for the purpose of making it clear that a finding that employees' activities are concerted does not necessarily call for a conclusion that such activities are protected by Section 7 (*supra* at pp. 256-257). It should be noted that the precise issue before this Court in the UAW case was the question of whether a state law forbidding partial strikes conflicted with the National Labor Relations Act. This Court adopted the view that the decisions of the Board holding partial strikes protected under Section 7 did not amount to an interpretation that "all work stoppages are federal

protected concerted activities" (*supra* at p. 255). The Court also pointed out in considering the question of preemption that the state law did not deal with the legal status of the "drastic remedy of discharge" which is involved in the National Labor Relations Act. There is nothing in the use by the Court of the quotation from the *Harnischfeger* decision of the Board to support the breadth of administrative discretion contended for by the Board in this case.

Furthermore, it does not follow from the dictum of this Court stating agreement with the above cited decision of the Courts of Appeals that the Courts of Appeals in those cases recognized a broad administrative discretion of the Board to define the scope of Section 7 without relationship to the basic policies of the Act or related Federal statutes. The error in the Board's position in this regard is demonstrated most clearly by the fact that in each of the decisions of the Courts of Appeals as to which this Court stated its agreement, the Courts of Appeals did not accept the administrative judgment of the Board in determining the legal scope of concerted activities under Section 7 of the Act.

Analysis of these decisions of the Courts of Appeals will also show, Respondent contends, that the courts' decisions are consistent with judicial statements as to the importance of the policies of the Act in determining Section 7 questions. Thus, the Court of Appeals for the Fourth Circuit—in holding that a "wildcat" strike of a minority of employees without authorization or sanction of the union which was chosen as the

bargaining representative was not protected by Section 7—stated the basis upon which it placed limits on the protection of Section 7 in the following language:

> ". . . we are of opinion that the 'wildcat' strike in which the employees were engaged and for which they were discharged was not such concerted activity as falls within the protection of Section 7 of the NLRA but a *strike in violation of the purposes of the Act* by a minority group of employees in an effort to interfere with the collective bargaining by the duly authorized bargaining agent selected by all the employees. The purpose of the Act was not to guarantee employees the right to do as they please but to guarantee to them the right of collective bargaining for the purpose of preserving industrial peace. * * *
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> "It is perfectly clear not only that the 'wildcat' strike is a particularly harmful and demoralizing form of industrial strife and unrest, the necessary effect of which is to burden and obstruct commerce, but also that it is necessarily destructive of that collective bargaining which it is the purpose of the Act to promote." *National Labor Relations Board v. Draper Corp.*, *supra*, at pp. 202-203.

It can reasonably be inferred from the basic concern of the National Labor Relations Act with the promotion of the "flow of commerce" that the maintenance of reasonable discipline in the system of production is within the scope of the policies

of the Act (Sec. 1). As stated by this Court in *Republic Aviation Corp. v. National Labor Relations Board*, 324 U. S. 793, 798, "Opportunity to organize and proper discipline are both essential elements in a balanced society."

Although there may be differences of point of view as to the correctness of the decisions of the Courts of Appeals cited in the dictum in this Court in the *UAW* case, it will be seen that each of these cases involved a decision holding that the protection of Section 7 is withdrawn because of the conflict of the concerted activity with the necessity for the maintenance of discipline in the process of production. Thus in the *Conn Ltd.* case, *supra*, the Court held concerted refusal to work overtime during the course of a labor dispute not protected by Section 7. (It may be noted parenthetically that this is the same conduct held protected by the Board in *Harnischfeger*.) The Court stated that "We are aware of no law or logic that gives the employee the right to work upon terms prescribed solely by him. That is plainly what is sought to be done in this instance. It is not a situation in which employees ceased work in protest against conditions imposed by the employer, but one in which the employees sought and intended to continue work upon their own notion of the terms which should prevail. If they had the right to fix the hours of their employment, it would follow that the same right existed by which they could prescribe all conditions and regulations affecting their employment" (*supra* at p. 397).

Although the Court made no explicit reference to the policies of the Act, it can be inferred that

the above statement is consistent with a conclusion that the unilateral determination of terms and conditions by employees contravenes the policy of collective bargaining which is a main purpose of the Act. A similar decision was made in the *Condenser Corp.* case where the Court denied enforcement of a reinstatement order applicable to an employee who was discharged because he and other employees refused to work after the noon recess until their demands were met although the employees had agreed to discuss the matter at the end of the day. In the *Home Beneficial Life Insurance Co. case*, life insurance agents handling group insurance collections and claims demanded modification of a company rule requiring them to report to the office five mornings per week before they set out on the day's work. The agents wished to report only two days per week. The company discharged agents who did not report pursuant to the rule. The Court of Appeals enforced a reinstatement order for those agents who struck and denied enforcement with respect to those agents who continued to work but refused to report to work in accordance with the rule. The Court stated the views upon which it proceeded as follows:

> "... the statute (Sec. 7) expressly recognizes the right of employees to engage in concerted activities but does not and could not confer upon them the right to engage *en masse* in unlawful activities, or, to defy the authority of the employer to manage his business while remaining in his service. When they engage

in an unlawful sit-down strike, as in *NLRB v. Fansteel*, 306, U.S. 240, 254, they may be discharged by an employer, even though he has been guilty of unfair labor practices; and when, as here, they refuse to obey the rules laid down by a law-abiding management for the conduct of the business, they may be discharged . . ." (at p. 284).

In the *Indiana Desk Co.* case, *supra*, the Court refused to enforce an order requiring reinstatement of employees who went on strike to secure demands which were in violation of the Wage Stabilization Act.

It also considered mass picketing "unlawful" (*supra* at p. 995) because "the picketing was designed and maintained for the avowed purpose of forceably excluding any and all employees from entering respondent's plant and . . . the pickets were prepared to use any force necessary to accomplish such purpose:" (*id.*)

It is respectfully submitted that the above decisions of the Courts of Appeals holding unprotected concerted activity in violation of company work rules during work hours do not stand for the proposition that the National Labor Relations Board is vested with such unlimited administrative discretion to condemn so-called "indefensible" conduct as would include fair comment by employees on a matter of public interest published during off duty hours.

The Board seeks to "bolster" its view concerning the scope of its administrative discretion to condemn "indefensible" concerted activities by

citing the legislative history of Section 7 of the amended Act (Pet. br. pp. 24-26). Respondent contends that this legislative history does not furnish the support claimed by the Board.

The House passed a bill which proposed the amendment of Section 7 to read as follows:

> "Employees shall have the right to self-organization, to form, join or assist any labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities (*not constituting unfair labor practices under Sec. 8(b), unlawful concerted activities under Sec 12, or violations of collective bargaining agreements*) for the purpose of collective bargaining or other mutual aid or protection . . ." (*Legislative History of Labor Management Relations Act, 1947*, p. 176).

The conference agreement deleted the proposed amendment, which is italicized above, for two stated reasons: (1) the amendment was unnecessary because "the courts have firmly established the rule that under the existing provisions of Section 7 of the National Labor Relations Act employees are not given any right to engage in unlawful, or other improper conduct (House Conference Report 510 on H. R. 3020, 80th Cong. 1st Sess. pp. 38-39; *Legislative History of Labor Management Relations Act, 1947*, pp. 542-543), and (2) "There was real concern that the inclusion of such a provision might have a limiting effect and make improper conduct not specifically

mentioned subject to the protection of the Act," *id.* p. 543.

These statements support the position of this Court in *United Automobile Workers v. Wisconsin Employment Board, supra* at p. 260, that "Congress has concurred in the view that neither Section 7 nor Section 13 confers absolute right to engage in every kind of strike or other concerted activity . . ." They do not support the position that Congress intended to vest administrative discretion in the Board to proscribe any concerted activity which the Board might deem "improper." The cases cited or referred to in the House Conference Report as establishing the rules which made unnecessary further change in the language of Section 7 are *Fansteel, supra, Southern Steamship Co., supra, Indiana Desk Co., supra,* Matter of *Berkshire Knitting Mills, supra, American News Co.*, 55 NLRB 1302, where the Board held that employees had no right which was protected under the Act to strike to compel the employer to violate the Wage Stabilization laws; *Scullin Steel*, 65 NLRB 1294, and *Dyson*, 72 NLRB 445, in which the Board held that strikes in violation of collective bargaining agreements were not concerted activities protected by the Act; and *Thompson Products Co.*, 72 NLRB 886 in which the Board held that a strike for the purpose of compelling the employer to violate a certification of bargaining representatives issued by the Board was unprotected. The Conference Committee also noted its satisfaction in the fact that the reasoning of the Board in the referred to decisions appeared to have ruled *Berkshire Knitting Mills, supra,*

where the Board attempted to distinguish between what it considered as major crimes and minor crimes for the purpose of determining what employees were entitled to reinstatement. Reference to the Committee Report will show that the above cited cases were quoted in support of the view of the Conference Committee that the Board was consistently applying the principles established by the Courts that "employees are not given any right to engage in *unlawful or other improper conduct*," *id.* pp. 542-543.

It is these cases which give content to the meaning of the words "unlawful or other improper conduct." Therefore, in the context of the statements in the Conference Report the words "other improper conduct" are given full meaning when applied to cases of concerted activities which although not specifically unlawful in the sense of the term as used in *Fansteel* or *Southern Steamship Co.*, were nevertheless improper because of their objectives which were not consistent with the basic policies of the Act or of related Federal statutes.

In any event, the words "improper conduct" used by the draftsmen of the Conference Committee Report cannot be extended to mean that any conduct not specifically enumerated in the deleted House amendment may be condemned and removed from the protection of Section 7 of the Act by a determination of the Board that such conduct is "improper". Furthermore, legislative history may be useful in determining the intent of specific language which has been enacted by the Congress;

it is not a proper basis for writing words into the Act which were not adopted by the Congress.

4. If the legislative history of the Act or the decision of the Courts of Appeals relied upon by the Board in its brief establish the proposition that the Board is vested with the discretion which it claims, then the application of Section 7 would raise constitutional questions.

It is fundamental that legislative power cannot be delegated to the executive department or administrative agencies of government. There must be an adequate standard specified upon the basis of which the executive or administrative is to perform its functions. This Court has refused to make an exception to this constitutional rule even for the President of the United States. *Panama Refining Co. v. Ryan*, 293 U. S. 388. In that case, Sec. 9(c) of the National Industrial Recovery Act authorized the President to prohibit the transportation of hot oil in interstate commerce. There was no standard stated to determine when he would exercise this power and the Court took the view that the statement of policy in the Act contained nothing as to the circumstances in which the transportation of hot oil should be prohibited by the President. The Court said in language which runs counter to the position of the Board in the instant case that "the effort by ingenious and diligent construction to supply a criterion still permits such a breadth of authorized action as essentially to commit to the President the functions of a legislature rather than those of an executive or administrative officer executing a declared legisla-

tive policy" at pp. 418-419. The Court also stated that:

> "The question whether such a delegation of legislative power is permitted by the Constitution is not answered by the argument that it should be assumed that the President has acted, and will act, for what he believes to be the public good. The point is not one of motive but of constitutional authority, for which the best of motives is not a substitute." (*ibid.* at p. 420)

In *Schechter Corp. v. United States*, 295 U.S. 495, the Court held that the legislative terminology of "fair competition" was an illusory standard not sufficient to save the National Industrial Recovery Act from being declared unconstitutional on the ground that it delegated legislative power to the executive. Chief Justice Hughes analyzed the term in the following language:

> "What is meant by 'fair competition' as the term is used in the Act? Does it refer to a category established in the law and is there authority to make codes limited accordingly? Or is it used as a convenient designation for whatever set of laws the formulators of a code for a particular trade or industry may propose and the President may approve (subject to certain restrictions) or the President may himself prescribe, as being wise and beneficent provisions for the government of the trade or industry in order to accomplish the broad purposes of rehabilitation, correction

and expansion which are stated in the first section of Title I.

"The Act does not define 'fair competition'. 'Unfair competition' as known to the common law, is a limited concept." (*supra* at p. 531)

Justice Cardozo, in a concurring opinion, stated that: "The delegated power of legislation which has found expression in this Code is not canalized within banks that keep it from overflowing. It is unconfined and vagrant . . . Here in effect is a roving commission to inquire into evils and upon discovery, correct them" (*supra*, p. 551).

See also *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U. S. 579. cf. *Casey v. United States*, 191 F. 2d 1 (C.A. 9) reversed on other grounds, 343 U.S. 808.

It may be said that the subject of power which the Board claims has been delegated to it by the Congress in the instant case is of a lesser degree of importance than the subjects of delegation involved in the above cases. It is respectfully submitted however, that, if so, the principles of constitutional government and due process of law are equally applicable. The concept of limitation of administrative power cannot be disregarded because the area of variation from such concept is deemed "modest and obviously sensible" by the administrative agency concerned (Pet. br. 1f). Since it is the standard rule of construction to interpret a statute in such manner as to avoid constitutional questions, it is submitted that the "roving commission" claimed by the Board for the definition of concerted activities which are "indefensi-

ble under the circumstances" or "beyond the pale" has no foundation in this Act or law.

B. The Publication of the Handbill Did Not Contravene Basic Policies of the Act or of Related Federal Statutes

If then the National Labor Relations Board has not been given a "roving commission" to remove concerted activities, not independently unlawful, from the protection of Section 7, the limits on the Board's power must be found not "in the circumstances" but in the purposes and policies of the Act and in the Congressional objectives of the Act or of related Federal statutes.

It is respectfully submitted that the Congressional statement of its purposes and policies in the Act does not support the view that the Board was authorized to make determinations on the basis of private rights. The Board was authorized to adjudicate such rights on the basis of public policy and interest. Nor was the Board authorized to engage in a fictional process of striking a physical or quantitative balance of employer and employee rights. When such rights come into conflict, the decision as to which shall prevail must turn on the effect of the decision on the public interest.

The first paragraph of the "Declaration of Policy" of the Labor-Management Relations Act, 1947 (Section 1(b)) calls upon employers, employees and labor organizations to recognize "*under law*" one another's legitimate rights in their relations with each other, "and *above all* recognize *under law* that neither party has any right in its relations with any other to engage in acts or practices which

jeopardize the *public health, safety or interest.*"

The second paragraph of Section 1(b) provides that it is a "purpose and policy" of the Act "to define and proscribe practices on the part of labor and management which affect commerce and are *inimical to the general welfare*, and to *protect the rights of the public* in connection with labor disputes affecting commerce."

The question is therefore presented by this aspect of the case as to whether the concerted activity here involved was inimical to the general welfare or the public interest.

This inquiry must take as its starting point the fact that the Company was operating a television station by virtue of a license granted by the Federal Communications Commission under the Communications Act of 1934. The purpose of that Act is to provide ". . . a rapid, efficient, nationwide and worldwide *wire* and radio communication service with adequate facilities . . ." (Communications Act, Sec. 1, *infra*, p. 63).

Station licenses are issued only after a finding by the Commission that "the public convenience, necessity or interest will be served thereby" (Sec. 307(a), *infra*, p. 64). Licensees hold their rights to operate for the temporary period of three years and after the expiration of such period renewal is granted only if an affirmative finding is made that such renewal would serve the "public convenience, necessity or interest" (Sec. 307(d), *infra*, pp. 64-65). The Commission is authorized by the Act to revoke the license even during the period of its temporary duration (Sec. 308(b), *infra*, p. 65).

It is clear that Congress determined that the

adequacy of program service was an integral part of the public interest in the telecasting industry. See *KFBK Broadcasting Association v. Federal Radio Commission*, 47 F. 2d 670 (C.A., D. C.).

> "It is apparent, we think, that the [radio] business is impressed with a public interest and that, because the number of available broadcasting frequencies is limited, the Commission is necessarily called upon to consider the character and quality of the service to be rendered."

The Federal Communications Commission has stated in its Blue Book entitled "*Public Service Responsibility of Broadcast Licensees*", which is equally applicable to television, that

> "On the basis of the . . . legislative history there can be no doubt that Congress intended the Commission to consider overall program service in passing on applications. The Federal Communications Commission from the beginning accepted the doctrine that its public interest determinations like those of its predecessor, must be based in part at least on grounds of program service." (at p. 11)

The close relationship of program service and the public interest is further defined by the Commission as follows:

> "As has been noted, the Commission must determine, with respect to each application granted or denied or renewed, whether or

not the program service proposed is 'in the public interest, convenience, and necessity.'

"The Federal Radio Commission was faced with this problem from the very beginning, and in 1928 it laid down a broad definition which may still be cited in part:

> "'Broadcasting stations are licensed to serve the public and not for the purpose of furthering the private or selfish interests of individual or groups of individuals. The standard of public interest, convenience, or necessity means nothing if it does not mean this . . . The emphasis should be on the *receiving* of service and the standard of public interest, convenience, or necessity should be construed accordingly. . . . The *entire* listening public within the service area of a station, or of a group of stations in one community, is entitled to service from that station or stations. . . . In a sense a broadcasting station may be regarded as a sort of mouthpiece on the air for the community it serves, over which its public events of general interest, its political campaigns, its election results, its athletic contests, its orchestras and artists, and discussion of its public issues may be broadcast. *If . . . the station performs its duty in furnishing a well rounded program, the rights of the community* have been achieved.' (In re Great Lakes Broadcasting Co., F.R.C. Docket No. 4900; cf.

3rd Annual Report of the F.R.C., pp. 32-36.) (Emphasis supplied)"

The Commission has determined that the carrying of local live programs is one of the most important considerations in determining the adequacy of the station's program service (Blue Book pp. 36-39). "In granting and renewing licenses, the Commission has given repeated and explicit recognition to the need for adequate reflection in programs of local interests, activities and talent." (*ibid.* at p. 37) The courts have supported this position of the Commission. *Courier Post Broadcasting Co. v. F. C. C.*, 104 F. 2d 213, 218 (C. A., D. C.).

A "local live program" was defined by the Commission in Public Notice 95462 dated July 2, 1946 as "any local program which uses live talent exclusively, whether originating in the station's studios or by remote control. Programs furnished to a station by a network or another station, however, are not classified as 'live', but as 'network'. *A program which uses recordings in whole or in part, except in a wholly incidental manner, should not be classified as 'live' but as 'recorded'.* Wire programs, as defined above, should likewise not be classified as 'live'. A recorded program which is a local live program produced by the station and recorded for later broadcasting by the station shall be considered a local live program" (Blue Book, Preface). (Italics supplied)

In *Bamberger Broadcasting Service*, (Docket Nos. 7241, 3, 5, 6, 8 and 7250, FCC) 3 Pike & Fisher, *Radio Regulation* 1069, the Communications Commission preferred an applicant for li-

cense who would provide full television service for the community. The Commission stated that ". . . News Syndicate, upon the showing made, offers greater assurance of establishing *a prompt television service in the area* than does Debs Memorial. It is to be noted in this regard that Debs Memorial would install its equipment in successive stages and that *field pickup facilities for televising remote events would not be acquired until some time after the station goes on the air.*"

The Commission in its Blue Book emphasizes the role of the public in the improvement of station program service and the need for public criticism of station program service:

> "Primary responsibility for the American System of broadcasting rests with the licensee of broadcast stations, including the network organizations. It is to the stations and networks rather than to federal regulation that listeners must primarily turn for improved standards of program service. The Commission, as the licensing agency established by Congress, has a responsibility to consider overall program service in its public interest determinations, but affirmative improvement of program service must be the result primarily of other forces.
>
> "One such force is self-regulation by the industry itself, through its trade associations."
>
> * * *
>
> "Forces outside the broadcasting industry

similarly have a role to play in improved program service."

* * * *

"It is hoped that the facts emerging from this report and the recommendations which follow will be of interest to the groups mentioned. With them rather than with the Commission rests much of the hope for improved broadcasting quality.

"While much of the responsibility for improved program service lies with the broadcasting industry and with the public, the Commission has a statutory responsibility for the public interest, of which it cannot divest itself. The Commission's experience with the detailed review of broadcast renewal applications since April 1945, together with the facts set forth in this report, indicate some current trends in broadcasting which, with reference to licensing procedure, require its particular attention.

"In issuing and in renewing the licenses of broadcast stations the Commission proposes to give particular consideration to four program service factors relevant to the public interest. These are: (1) the carrying of sustaining programs, including network sustaining programs, with particular reference to the retention by licensees of a proper discretion and responsibility for maintaining a well-balanced program structure; (2) *the carrying of local live programs;* (3) the carrying of programs devoted to the dis-

cussion of public issues, and (4) the elimination of advertising excesses." (pp. 54-55)

The concerted activity of publishing the handbill did not contravene—it furthered the public interest in the character and quality of the Company's program service.

The Company had failed to purchase the technical equipment required to televise live programs in the studio or to make pick-ups of local events remote from the studio. Its equipment was available only for the televising of film, kinescope recordings (a special form of motion picture film), and slides.

As late as November 1949, the Company's advertising literature showed that it could produce only film programs and that even announcements from the studio were limited to slide and film (R. 236). The inadequate quality of the television program service, which had commenced in July 1949, was admitted by the Company in advertising literature dated August 1949 which it distributed to the public (R. 238).

These known and admitted facts were published in the handbill which advertised the facts that WBTV's programs were limited to film and that WBTV did not have the proper equipment to allow the listening public to receive "local" programs such as local baseball games, football games and other local events. The handbill also stated that cities like New York, Boston, Philadelphia and Washington received "such" programs nightly and appealed to a sense of civic pride in classing

Charlotte, North Carolina as not inferior to these metropolitan centers.

The handbill did not call for a boycott of either the television station or of stores selling television sets.

The publication could only serve to accelerate whatever program the Company had for securing the equipment needed to provide an adequate television service including local live programs. The public interest could only be advanced by such acceleration.[1]

Yet it was this very publication " in the interest of consumers and the public at large" (R. 16) which was condemned by the Board "in the circumstances of the case" as "hardly less 'indefensible' than acts of physical sabotage". (*id.*) This conclusion is not consistent with the Congressional objectives of this or any other Act, sound considerations of public policy, reason or logic.

The "circumstances" related by the Board in its Decision and Order and in its brief before this Court in support of its conclusion that the concerted activity of publication was "indefensible" are irrelevant to the legal issues in this case.

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[1] cf. *Address* by Professor Sumner H. Slichter, delivered Oct. 27, 1952 before the American Gas Association, 31 Labor Relations Reporter 5, 13:

> "The American economy needs the contribution which the trade unions are making to it. Even with all the competition and research in industry, enterprises need the additional spur to efficiency that comes from strong pressure for higher wages and better conditions."

Section 7 protects "concerted activities for the purpose of . . . mutual aid or protection." It has been held that concerted activity for the purpose of winning the favor of the public on a non-labor issue in order that the union may acquire the support of public opinion in its labor disputes is protected by Section 7. *National Labor Relations Board v. Peter Cailler Kohler Co.*, 130 F. 2d 503 (C.A. 2). The Court there stated that ". . . a union may subsidize propaganda, distribute broadsides, support political movements and in any other way further its cause or *that of others whom it wishes to win to its side.*" (italics supplied) (*ibid.* at p. 506).

That the Board has overlooked this rule of law is evidenced by the statement in its brief that in the instant case ". . . the normal justification for affording the protection of the Act to employees who disparage their employer i.e. publicizing a labor dispute *in order to persuade the public to enlist its support in the dispute was lacking.*" (italics supplied) (Pet. br. 38)

Respondent therefore submits that such circumstances as: widespread distribution of the handbill away from the picket line (R. 15, Pet. br. 37) and the non-labor subject matter of the handbill (R. 17, Pet. br. 37, 38) do not remove the concerted activity of its publication from the scope of Section 7.

Furthermore, Section 7 guarantees the right of "employees" to engage in "concerted activities". It is not limited to the concerted activities of labor organizations. See *National Labor Relations Board v. Schwartz*, 146 F. 2d 773, 774 (C. A. 5).

Therefore, the fact that the handbill was published in the name of the occupational title of the employees (R. 16, Pet. Br. 37) does not remove the concerted activity from the protection of Section 7. In this connection it should be noted that the term "WBT technicians" was an entirely truthful statement as to the work status of the employees involved in this case. The term "technicians" is a description of the occupation of the employees involved in this proceeding in the same sense as the more widely known terms: "carpenters", "electricians" or "bricklayers". Certainly it cannot be said that the policies of the Labor Management Relations Act of 1947 require all union publications to be issued over the name of the union, its local union number and affiliation. Such a requirement, if constitutionally valid, would be consistent only with a detailed set of minute regulations concerning the procedural practices of union activity. It cannot be reasonably claimed that the Labor Management Relations Act of 1947 purports to establish such regulations in Section 7.

The brief of the Board introduces an additional consideration not mentioned or relied upon in the decision of the Board. The Board now states: "In circumstances like these, an employer would seem plainly (sic) to have the right to discharge employees who seek to prevent him from selling a product *when they are paid to do just the opposite.*" (Pet. Br. 38-39.) This statement in the brief has no support in the record or the facts of this case. The employees involved were manual workers who operated the physical and technical equipment of the Company. They were not em-

ployed in the advertising or sales department. The above reference together with statements in the Board's decision which indicated that Respondent "apprehend[ed]" the loss of advertising revenue view the problems raised by the provisions of Section 7 as limited to the "expectable reaction" of an employer (Pet. br. 16). The rule of law is, however, that if the employees had the right to publish the handbill, the adverse effect upon the private interests of the employer would not serve to defeat the public right granted to the employees. The appropriate test in determining the legal status of the concerted activities of the employees must be based on considerations of public, rather than private, policy. This is particularly the case where, as here, the employer is engaged in the operation of a "public interest" business and the quality of his "product" is an issue of governmental and public concern.

It is respectfully submitted that the enumeration of factors of circumstance in both the decision of the Board and its brief are governed not by considerations of law but by the number of "differences" (Pet. br. 36, fn. 14) between the concerted activities in this case and "the conventional tactics of organized labor." (Pet. br. 36) The brief refers to the handbill as "unlike the *traditional* appeal for public support in a labor dispute" (Pet. br. 39) and endeavors to distinguish the *Peter Cailler Kohler Co.* case, *supra*, on the ground that the publication in that case "was *not dissimilar* from the conventional appeal of a union for public support in a dispute with the employer" (Pet. br. 38, fn. 15). Respondent submits that

the content of the words "concerted activities" as used in Section 7 cannot be limited to the personal views of the members of the Board concerning what constitutes "orthodox" procedure in labor disputes. The very breadth of the language employed in Section 7 shows a contrary intent. Furthermore, the position of the Board would consider unprotected such employees' activities as appearing in rate proceedings in support of the public position rather than that of their employer, employees' expressions in the court of public opinion that their employer's prices are too high or that their employer's rate of conversion to a wartime economy is too slow. Although such activities are not frequent, they have occurred. The public interest would not be advanced—it would be impaired—if the working officers or members of a union could be subject to retaliatory discharge by the employer for such expressions of opinion. This would be the result of the Board's action in the instant case.

The public policy of the United States is to protect freedom of speech. This policy is found in the Constitution, at common law[8] and indeed, in this very Act.

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[8] The privilege of fair comment on matters of public interest is set forth as follows in Newell, *Slander and Libel*, 4th Ed. "Every person has the right to publish . . . fair and candid criticism, although the author may suffer loss from it. Such a loss the law does not consider an injury, because it is a loss which the party ought to sustain. It is, in short, the loss of fame and profits to which he was never entitled . . . Fair discussion is essen-

The decision of the Board would encourage the suppression of opinion on matters of public interest if employees are the source of that opinion. This is not an essential element of a balanced society. There is no basis for establishing the policy implicit in the Board's decision as a limitation on the scope of Section 7.

For all of the foregoing reasons, it is contended that the concerted activity of publishing the handbill did not contravene any policy of the National Labor Relations Act as amended, or of any other Federal statute. The Board therefore did not have the unlimited discretion to characterize the publication as "indefensible" and remove it from the protection of Section 7.

A fortiori, the Court of Appeals did not commit error by remanding the case to the Board for further proceedings, including determination of

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tially necessary to the truth of history and the advancement of science" (at p. 521).

"All theatrical and musical performances, flower shows, etc., may be freely criticized provided that the comments be *not malevolent* or flagrantly unjust. The exhibitor, as well as the author and artist, by his appearance as such in public, invites criticism and he cannot complain if the criticism is hostile so long as it is in good faith" (at pp. 550-551).

[6] Sec. 8(c) provides that the "expressing of any views, argument or opinion or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

whether the concerted activity was within the scope of Section 7 in accordance with the legal interpretation of that section by the Court of Appeals.

CONCLUSION

It is respectfully submitted that the decision of the court below should be affirmed.

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APPENDIX A

Section 1 of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U.S.C., Supp. V, 141, et seq.), provides in pertinent part as follows:

SHORT TITLE AND DECLARATION OF POLICY

Section 1. * * *

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in con-

nection with labor disputes affecting commerce.

The pertinent provisions of the National Labor Relations Act, as amended (Act of July 5, 1935, 49 Stat. 449, 29 U.S.C. 151 et seq., as amended by the Act of June 23, 1947, Public Law 101, 80th Congress, 1st Session and as further amended by the Act of October 22, 1951, Public Law 189, 82nd Congress, 1st Session, 29 U.S.C., Supp. V. 151 et seq.) are as follows:

FINDINGS AND POLICIES

Section 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from ~~or into~~ the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of

association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * *

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

UNFAIR LABOR PRACTICES

Sec. 8(a). It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce

employees in the exercise of the rights guaranteed in section 7;

* * * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization;

* * * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * * * *

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

* * * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise. * * *

* * * * * *

(c) * * *If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * * If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * within any circuit * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall

cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to the questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review * * * by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).

(*f*) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was

alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

* * * * *

APPENDIX B

The pertinent provisions of the Communications Act of 1934, as amended (Act of June 19, 1934, 48 Stat. 1064 et seq., 47 U.S.C. 151 et seq., as amended by the Act of June 5, 1936, 49 Stat. 1475, 37 U.S.C. 307, as amended by the Act of May 20, 1937, 50 Stat. 189, 47 U.S.C. 151 et seq., and as further amended by the Act of July 16, 1952, Public Law 554, 82nd Congress, 2nd Session) are as follows:

PURPOSES

Sec. 1. For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States *a rapid, efficient, Nation-wide and world-wide wire and radio communication service with adequate facilities* at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is created a commission to be known as the "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter.

* * * * *

DEFINITIONS

Sec. 3. For the purposes of this chapter, unless the context otherwise requires—

(a) "Wire communication" or "communication by wire" means the transmission of writing, signs, signals, *pictures*, and sounds of of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

* * * * *

LICENSES

Sec. 307(a) The Commission, if public convenience, interest or necessity will be served thereby, subject to the limitations of this chapter, shall grant to any applicant therefor a station license provided for by this chapter.

* * * * *

(d) No license granted for the operation of a broadcasting station shall be for a longer term than three years and no license so granted for any other class of station shall be for a longer term than five years, and any license granted may be revoked as hereinafter provided. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed three years in the case of broadcasting licenses, and not to exceed

five years in the case of other licenses, *if the Commission finds that public interest, convenience, and necessity would be served thereby.* * * *

Sec. 308.

* * * * *

(b) * * * The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and/or such statement of fact shall be signed by the applicant and/or licensee under oath or affirmation.

* * * * *

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No. 15

In the Supreme Court of the United States

October Term, 1953

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

LOCAL UNION NO. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL), *Respondent*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

OBJECTION OF RESPONDENT TO MOTION OF JEFFERSON STANDARD BROADCASTING COMPANY FOR LEAVE TO FILE MEMORANDUM STATEMENT, AS AMICUS CURIAE

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On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

OBJECTION OF RESPONDENT TO MOTION OF JEFFERSON STANDARD BROADCASTING COMPANY FOR LEAVE TO FILE MEMORANDUM STATEMENT, AS AMICUS CURIAE

To the Honorable, The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Pursuant to Rule 27 (9) (c) Respondent files this objection stating its reasons for withholding consent to the Motion of Jefferson Standard Broadcasting Company to file a Memorandum Statement as *amicus curiae:*

1. The motion is not timely (Rule 27 (9) (a) and (c)). Five months have elapsed since this

Court granted the writ of certiorari (May 4, 1953). Yet the Company, which is on the same side as the Petitioner, waited until the week preceding oral argument and the very day upon which Respondent's brief was required to be served upon Petitioner (October 5, 1953) to mail its letter requesting consent. Not a single fact or reason is offered by the Company in its motion as an excuse for the delay.

2. The Company has not been excluded from this case. It chose not to intervene in the court below although it was given full notice of the pendency of the proceedings (R. 9). Its interest in the case was no more and no less there than it is here.

Respectfully submitted,

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PHILIP R. COLLINS
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MAR 11 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, ~~1952~~ 1953

NO. 605 15

NATIONAL LABOR RELATIONS BOARD
Petitioner

vs.

LOCAL UNION NO. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia

PETITION OF EMPLOYER FOR LEAVE TO INTERVENE

WHITEFORD S. BLAKENEY
Charlotte, North Carolina
Attorney for the Petitioner

Of Counsel:
F. T. MILLER, JR.
Charlotte, North Carolina

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

NO. 609

NATIONAL LABOR RELATIONS BOARD

Petitioner

vs.

LOCAL UNION NO. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia

---

PETITION OF EMPLOYER FOR LEAVE TO INTERVENE

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

NOW COMES the Jefferson Standard Broadcasting Company, hereinafter referred to as the Company, and respectfully presents to the Court:

1. That it is a North Carolina corporation having its principal office and place of business in Charlotte, North

Carolina where it is engaged in the business of radio and television broadcasting.

2. That it is the employer involved in the controversy which has been presented to this Court by the above-entitled Petition for Writ of Certiorari.

3. That it has a direct, substantial and urgent interest in the outcome of this controversy.

4. That originally this controversy was a proceeding under the National Labor Relations Act, as amended, brought by the National Labor Relations Board against the Company and in which this Company and the Board were the only active participants, but that more recently this controversy has been carried on as if it were a concern only of the Board and of Local Union No. 1229 of the International Brotherhood of Electrical Workers, above-named.

5. That more specifically, in its aforesaid proceeding against the Company, the Board, on June 26, 1951, issued a Decision and Order which was in part favorable and in part adverse to the Company; that thereupon the Company proceeded to comply with such parts of the said Decision and Order as were adverse to it; that several months thereafter, namely on November 3, 1951, as the Company later learned, Local Union No. 1229 of the International Brotherhood of Electrical Workers filed a petition for review of the Board's decision and order—not in the United States Court of Appeals for the Fourth Circuit, where the Company conducts its business, where the above-named Union carries on its affairs, where the controversy arose and where the Board hearings in the case were held—but in the United States Court of Appeals for the District of Columbia; that the Company was not made a party to the said review proceeding in the United States Court of Ap-

peals for the District of Columbia, was never served with a copy of the petition for review, nor in any way apprised of the existence of said review proceedings or any of the developments therein, except that on or about December 15, 1951 the Company received from the Board a copy of certain papers indicating that the Board was responding in said Court to a petition for review filed by the aforesaid Union; that the Company received knowledge of the decision of the Court of Appeals upon the said petition for review only by noticing an account thereof in the newspapers; that thereupon the Company's attorneys twice wrote to the Board requesting information as to whether it was the intention of the Board to petition this Court for a Writ of Certiorari in the matter; but that neither the Company nor its attorneys received answer to this inquiry until, on February 27, 1953, the Company's attorneys received from the Board a copy of its Petition for Writ of Certiorari, filed herein on February 17, 1953.

6. That, as the Company is informed and believes, the aforesaid proceeding in the Court of Appeals for the District of Columbia was fatally defective in that Local Union No. 1229 of the International Brotherhood of Electrical Workers did not have, and should not have been allowed, any standing to seek or obtain review of the aforesaid decision and order, no decision or order having been rendered against it by the Board.

7. That, as the Company is informed and believes, the aforesaid proceeding in the Court of Appeals for the District of Columbia was further fatally defective in that, as set forth above, the Company was never served with the petition for review therein and was never in any way made a party to said proceeding; that it being upon the Company that the entire burden of any decision supporting the complaint will fall, the Company was as truly a necessary

party in the review proceeding before the Court of Appeals as it was in the proceeding before the Board; that the directives which have been sought and are being sought in this controversy are specifically against this Company, and no other person or party than this Company; that more particularly the directives being sought are that *this Company* shall be required to take a number of discharged employees back into its employment and that *this Company* shall be required to pay to them large sums of money in the form of back pay accumulating since their discharge and that *this Company* shall be required to recognize and deal with the Union named above; that this Company thus has an obvious, direct and urgent interest in this controversy and should have been served with the petition for review in the proceeding before the Court of Appeals and should have been made a party to said proceeding.

8. That by reason of its clear and direct legal interest in the outcome of this controversy, as hereinabove shown, the Company should be allowed to intervene in the present proceeding in this Court.

9. That moreover, as the Company is informed and believes and as appears from the Petition for Writ of Certiorari herein, the Board, which has filed said Petition for Writ of Certiorari, does not intend to urge upon this Court that the proceeding in the Court below was defective in the respects shown above, namely, in that Local Union No. 1229 of the International Brotherhood of Electrical Workers had no standing to obtain review of the Board's Decision and Order and in that this Company was not served with the petition for review in said proceeding nor in any way made a party thereto; that therefore this Company should be allowed to intervene herein, not only because of its clear and direct legal interest in the outcome of the controversy, but also in order that it may present to

the Court the aforesaid issues bearing upon the validity of the proceeding in the Court below, which otherwise will not be presented to this Court.

10. That as to the issue of this controversy upon the merits, the decision of the Court below is erroneous and erroneous in an area which is of fundamental importance to the proper interpretation and administration of the National Labor Relations Act; that the Court below has made a broad and far-reaching ruling that under Section 7 of the National Labor Relations Act:—*An employer is powerless to act against employees for anything which they may do concertedly, unless their actions amount to a violation of some State or Federal law;* that the effect and extent of the ruling of the Court below is that if employees act in concert but not in positive violation of law, then no matter what may be their injury to the interest of their employer, their disregard of his instructions or their disservice to the purposes of their employment, the employer may take no action against them; that such proposition is not legally tenable and is not justified, under any proper interpretation of the National Labor Relations Act.

11. That the factual circumstances of the present controversy, as established by the record before the Board, are, as follows:

In the Summer of 1949 the Company, through the exertion of great effort and the expenditure of large sums of money, was initiating in Charlotte, North Carolina, and the surrounding area, the broadcasting of television. While the Company was in the midst of this effort, certain of the Company's technical or engineering employees began to distribute to the general public a leaflet or handbill ridiculing the Company's television operation.

The content of this handbill was untrue in general and in particular—in its tenor and in its specific statements. It announced that all of the Company's television programs were "on film," which was untrue. It declared that "no local programs" were presented by the Company, which was untrue. It represented that by the expenditure of more money the Company could have been presenting any programs which were being presented elsewhere in the larger Cities, which was untrue. It conveyed a general charge that the Company's television operations were "second-class" and proposed the idea that the Company regarded the City and community which it served as "second-class" and, therefore, only entitled to "second-class" television operation on the part of the Company.

This handbill was written by the Business Manager of the Local Union above named and a representative of the International Union. It was approved by the Executive Committee of the Local Union above named, which Committee was composed of seven of the employees who were later discharged by the Company. It was distributed by these seven and two other of the Company's employees. Five thousand copies of the handbill were distributed at the four corners of the main square at the intersection of Trade and Tryon Streets in the City of Charlotte. "Hundreds" were scattered over the public sidewalks. Batches of the handbill were thrown into the open windows of City busses. They were handed out in restaurants and were received in the mail, both at Charlotte and in surrounding towns and cities.

During the period when the handbill was being distributed the Company learned of a letter which had been written by the Business Manager of the Local Union above named and approved by the Union Executive

Committee and mailed to the Federal Communications Commission and which said:—"We feel that the local outlet is not utilizing the full facilitics as granted in the license. We, therefore, respectfully request, unless they take advantage of the situation, that the television channel be granted to some one who will." The suggestion was thus being made that the Company's license to operate in the field of television be revoked, an action which, if it had developed, would have inflicted a staggering financial loss upon the Company and upon many other businesses which had made large investments in reliance upon the Company's initiation of television broadcasting in the Charlotte area.

At the time of the distribution of the aforesaid handbill and the writing of the aforesaid letter, the Local Union above named and the Company were engaged in a labor dispute, in the sense that they had been unable to agree upon the renewal terms of a collective bargaining contract. The employees in question had, however, not gone on strike but were continuing to work and still drawing their regular pay from the Company. It was, moreover, conceded by the General Counsel for the Board that the Company had at all times and in all respects bargained "in good faith" with the Union in an effort to arrive at mutually agreeable terms for the renewal of the contract between the Company and the Union.

The aforesaid handbill, however, and the aforesaid letter to the Federal Communications Commission did not, either of them, make any mention of any labor dispute and from them a recipient would have no knowledge whatever that any such dispute existed. The handbill did not even bear the name of the Union. Neither document in any way referred to any controversy over

wages, hours or conditions of employment nor to any kind of concerted activity by employees for purposes of "mutual aid or protection" in a labor dispute.

Literature relating to the aforesaid labor dispute had previously been put out by the Union but none of such literature had had as intensive and wide-spread distribution as the aforesaid handbill. It was distributed by persons who in no way identified themselves as employees, or representatives of employees, disputing with their employer. Many people reading the handbill had no knowledge and no realization that they were being propagandized or "persuaded" in a labor dispute—for they were not addressed by a labor organization, nor appealed to in behalf of employees as against an employer, nor told of anything being either "unfair" or disagreed or in controversy in the realm of employee-employer relations. Readers of the leaflet were merely informed that the television being offered by the Company was strictly second-rate and that the Company was giving inferior service to the City and community in which it operated. The document told of no conflict, and sought no aid in any conflict between the Company and its employees. It sought to turn the public against the Company—not as aid to employees engaged in labor dispute with the Company—but purely upon the ground that the public ought to be dissatisfied with the quality of the Company's product.

The employees who distributed the handbill themselves realized that in doing so they were departing from advertising their labor dispute and from seeking to put pressure on the Company by information to and persuasion of the public with respect to their dispute. A member of the Union's negotiating committee and former President of the Local Union testified:—"I didn't ap-

prove of it (the handbill in question) but I did distribute it . . . I did not approve of that handbill." Another of these employees testified that he "didn't approve of that leaflet" and that as soon as he read it, he said that he "didn't want to distribute any of them."

The President of the Local Union testified that two days before the distribution of the handbill was begun, a representative of the International Union wrote and he, the President of the Local Union, signed and mailed a letter to all of the Company's approximately one hundred employees telling them that:—"The organization has plans to apply more pressure than has been used to date. We are forced to use stronger means . . ." He further testified, and the Board's General Counsel stipulated, that the greater "pressure" and the "stronger means" referred to in the letter was the handbill in question.

The nature and content of the handbill were such that it attracted wide-spread attention and aroused general discussion. The Board's General Counsel conceded that it "was generally discussed by the public" and that "hundreds" of business people "contacted" the Company's General Sales Manager "and asked him about it."

The distribution of this handbill had an immediately damaging and drastic effect upon television business in the Charlotte area. Those whose interests were connected with the development of television in this territory quickly expressed their concern to the effect that this handbill would "hurt the television business in Charlotte." A wholesale distributor of television receiving sets testified that his Company's sales of such sets in Charlotte dropped sixty-nine per cent in September

as compared to August, whereas the normal pattern would have been for it to rise from August to September. Another testified that although he reduced prices radically, his sale of television sets "hit the bottom in September when it should have been picking up" and were a "tremendous flop" in contrast to sales of television sets in other Southern cities. He testified that he only relieved this "distressing experience," by shipping much of his inventory to distributors elsewhere. In the midst of this, the Company's operations were financially, for the first time in eighteen years, deep "in the red."

The employees who distributed the aforesaid handbill intended that it should have, and calculated that it would have, the effect which it had. The Business Manager of the Local Union above named and the representative of the International Union, who, as stated above, together composed the document, upon presenting a copy of it to the representative of a radio service company, said:—"We're giving you this so that when TV sales drop off, you'll know the reason."

The employees whom the Company discharged were, moreover, planning to make further public attacks of the same, and even more extreme, nature upon the Company. The Board's General Counsel so stipulated. As four of these employees on one occasion handed copies of the leaflet to the Company's Program Manager on the public street, one of them said to him:—"If you think this is tough, wait until you see what we have coming up." One of them, as he presented a copy to the Company's Promotion Manager, said:—"Here, show this to (the Company's Vice-President and General Manager) and tell him that there are four or five more coming that are stronger than this." The Business Manager of the Local Union, who was one of the employees

distributing the leaflet, told a barber, after bringing one of the leaflets into his barber shop, "before we are through we will break WBT (the Company)."

In the light of all of the foregoing facts and circumstances, the Company discharged the employees who are referred to above. Whereupon, the head of the International Union said to the Company's General Manager:—"I don't blame you. I would have done the same thing."

12. That upon the facts and circumstances outlined above, the Board decided that, whether the actions of the employees in question were violative of any law or not, there was nothing in the National Labor Relations Act depriving the Company of the right to discharge them; that such decision was correct and that the ruling of the Court of Appeals to the contrary is erroneous.

WHEREFORE, the Jefferson Standard Broadcasting Company prays that it be allowed to intervene in this cause and that a Writ of Certiorari be granted herein to the end that this Court may review the decision which has been rendered by the Court below.

JEFFERSON STANDARD
BROADCASTING COMPANY

By: Whiteford S. Blakeney
Attorney

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

CHARLES H. CRUTCHFIELD, being duly sworn, deposes and says that he is an officer of the Jefferson Standard Broadcasting Company above named, to wit, its Vice-President and General Manager; that he knows the contents of the foregoing Petition for Leave to Intervene and that the same is true to his own knowledge, except as to such matters as are therein stated upon information and belief and as to these he believes the said Petition to be true.

Charles H. Crutchfield

Subscribed and sworn to before me,
this the 9th day of March, 1953.

Ivie H. Gulledge
Notary Public.

(Seal)

My commission expires May 16, 1953.

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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

NO. 15

NATIONAL LABOR RELATIONS BOARD
Petitioner

vs.

LOCAL UNION NO. 1229, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia

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MOTION OF EMPLOYER FOR LEAVE TO FILE MEMORANDUM STATEMENT, AS AMICUS CURIAE

WHITEFORD S. BLAKENEY
Charlotte, North Carolina
Attorney for the Petitioner

Of Counsel:
F. T. MILLER, JR.
Charlotte, North Carolina

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MOTION OF EMPLOYER FOR LEAVE TO FILE MEMORANDUM STATEMENT, AS AMICUS CURIAE

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Jefferson Standard Broadcasting Company respectfully presents to the Court:

1. That it is a North Carolina corporation having its principal office and place of business in Charlotte, North Carolina.

2. That Petitioner is the employer involved in this controversy.

3. That Petitioner has a direct, substantial and urgent interest in this case.

4. That it is upon this Petitioner that the burden of any decision supporting the complaint herein will fall; that the directives which have been sought and are being sought in this case would operate solely and specifically against this Petitioner; that more particularly, the directives being sought are that this Petitioner shall be required to take a number of discharged employees back into its employment and that this Petitioner shall be required to pay to them large sums of money and that this Petitioner shall be required to recognize and deal with the Union named above; that there is no person or party which has a more direct and urgent and obvious interest in this case than does this Petitioner.

5. That the Petitioner heretofore asked leave to intervene in and become a party to this proceeding but this request the Court denied.

6. That originally this was a proceeding brought and prosecuted solely against this Petitioner, and defended solely by this Petitioner, but that in the recent and present stages of the case, where its merits will be authori-

tatively determined, the Petitioner has been completely excluded as a party and denied any voice in the case—despite the fact that the directives sought would be, as pointed out above, wholly and solely against this Petitioner and the burden thereof would fall wholly and solely upon this Petitioner.

7. That this Petitioner now asks the Court for leave to file a Memorandum Statement herein, as amicus curiae —such Memorandum Statement to be short, consisting of approximately six printed pages, and not to constitute any further or additional argument of the case but to consist entirely of a statement of what this Petitioner considers to be the significant facts of the case as they appear of record.

WHEREFORE, the Petitioner respectfully prays the Court for leave to file such a Memorandum Statement, as amicus curiae.

WHITEFORD S. BLAKENEY
Charlotte, North Carolina
Attorney for the Petitioner

Of Counsel:

F. T. MILLER, JR.
Charlotte, North Carolina